2015 IL App (5th) 140618WC-U

Workers' Compensation
Commission Division
Order Filed: November 18, 2015

No. 5-14-0618WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

GENERAL DYNAMICS,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Williamson County.
	)	
v.	)	Nos. 13 MR 21
	)	14 MR 72
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Brad K. Bleyer,
(Annie Wade, Appellee).	)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson and Harris concurred in the judgment.
Justice Stewart dissented.

ORDER

¶ 1 *Held*: The circuit court erred by substituting its judgment for that of the Commission and in reversing the Commission's decision of January 11, 2013, which denied the claimant benefits pursuant to the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2010)). We reverse the circuit court's order of June 28, 2013, vacate the circuit court's order of December 15, 2014, vacate the Commission's decision of February 19, 2014, and reinstate the Commission's corrected decision of January 11, 2013.

¶ 2 General Dynamics (General) appeals from an order of the circuit court of Williamson County which reversed a decision of the Illinois Workers' Compensation Commission (Commission) which denied the claimant, Annie Wade, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)), and from an order of the circuit court which confirmed the decision of the Commission on remand which awarded the claimant benefits under the Act.

¶ 3 The following facts are taken from the evidence adduced at the arbitration hearing conducted on October 13, 2011.

¶ 4 The claimant was employed by General as an "NAIC" operator, and on June 10, 2010, she was assigned to work in a job known as "Reverse Torque." General produced projectiles (bullets), and the reverse torque procedure is performed to ensure that the top of the projectiles are properly attached to the casing. Performance of the claimant's job duties on June 10, 2010, required her to move between two bays that were separated by a wall. In the first bay, she picked up two projectiles, examined them for gaps, and then proceeded to the second bay where she placed the projectiles into a machine that performed the reverse torque procedure that tightened the projectile. After placing the two projectiles into the machine, the claimant would return to the first bay and operate the machine's levers. After the machine completes the reverse torque procedure, the claimant would pick up two more projectiles, examine them for gaps and then go into the second bay, remove the completed projectile from the reverse torque machine, inspect them, and place them either in the "good" box or the "reject" box. The claimant would then place the two new projectiles into the machine and repeat the process.

¶ 5 According to the claimant, she was required to move quickly as General had a quota policy of 800 projectiles every 2 hours. A video of a woman walking projectiles from one bay to

another was introduced into evidence. However, the claimant and a co-worker, Cecil Clover, testified that one would have to walk faster than the woman in the video in order to perform the reverse torque procedure. Clover testified that the woman depicted in the video was moving about 1/3 slower than the job required in order to reach the quota of completed parts.

¶ 6 The claimant testified that, as she was performing the reverse torque procedure on June 10, 2010, at about 1:30 p.m., she removed two projectiles from the machine and, as she turned to leave the bay, she stepped on her shoelace. She stated that she was thrown off balance and twisted to grab a table in order to keep from falling to the floor. That is when she felt pain in her lower back and "butt cheek." Clover testified that he saw the claimant walking with a limp and inquired as to whether she had hurt her knee. He stated that she told him that she thought that she had pulled a "butt" muscle. The claimant completed her work shift which ended at 3 p.m. The claimant testified that she was able to work on the following day, a Friday, but by the next Monday she was in such pain that she was unable to sleep.

¶ 7 According to the claimant, she did not seek immediate medical treatment because she thought that she had merely pulled a muscle. She stated that her symptoms got worse, so she went to her primary care physician at Logan Primary Care on June 15, 2010, where she gave a history to Dr. Workman's physician's assistant of having twisted her leg four days earlier and complaining of low back and right hip pain. The records of Logan Primary Care reflect that the doctor noted tenderness on palpitation, muscle tightness, and decreased range of motion, but no neurological deficits. Dr. Workman diagnosed muscle spasm and prescribed Flexeril. The record does not reflect that the claimant reported that she sustained her injury at work.

¶ 8 The claimant continued working and sought no further medical treatment until July 16, 2010, when she went to see the plant nurse. According to the claimant, her condition had gotten

progressively worse; she could not sit or stand. The claimant was instructed to see Dr. Mark Austin. She completed an Injury Report on that date, giving June 17, 2010, as the date of her accident.

¶ 9 The claimant was seen by Dr. Austin on July 19, 2010. The records of that visit reflect that the claimant gave a history of having twisted her leg after stepping on her shoelace while working on June 17, 2010. She complained of pain in her lower back radiating into her "butt cheek" and down her right leg into her knee. Dr. Austin diagnosed a strain/sprain and pain in the right lumbosacral spine with some spasms in the right hip and knee. Dr. Austin ordered x-rays, prescribed a hinged knee brace, recommended exercise, and placed the claimant on a light-duty restriction. The x-rays ordered by the doctor were normal.

¶ 10 On July 26, 2010, the claimant was again seen by Dr. Austin. The claimant reported no improvement in her symptoms. Dr. Austin's records reflect that he noted evidence of right leg sciatica. Dr. Austin continued the claimant's light-duty work restrictions and referred her for physical therapy.

¶ 11 The claimant testified that, on August 9, 2010, she was told that General would no longer accommodate her light-duty restrictions. She stated that she was not allowed to work as of that date.

¶ 12 On August 11, 2010, the claimant returned to Logan Primary Care and was seen by Dr. Workman. She reported pain in her low back and right knee and a feeling of cold in her ankle and foot. Dr. Workman ordered an MRI of the lumbar spine which was performed on August 12, 2010. The radiologist interpreted the scan as showing a central left-sided disc bulge/herniation at L4-5 with narrowing of the left neural foramen and a mild posterior bulge at L5-S1 with some narrowing of the left neural foramen.

¶ 13 The claimant was next seen by Dr. Workman on August 17, 2010. She complained of pain in her low back, right leg, right knee and heel, along with spasms in her back, pain, and a feeling of cold in her foot. Dr. Workman's assessment was low back pain with right lower extremity radiculopathy. The doctor ordered the claimant's prescriptions refilled and instructed her to remain off of work.

¶ 14 On September 21, 2010, the claimant was seen by Dr. David Kennedy, an orthopedic surgeon, on referral from Dr. Workman. The claimant gave a history of having twisted her back. She complained of pain in her low back, radiating down her right leg and into her knee and heel. On examination, Dr. Kennedy noted reduced lumbar range of motion with forward flexion and diffuse tenderness throughout the lower lumbar spine with tenderness to palpation on the right side. The doctor reviewed the MRI scan taken on August 12, 2010, and noted a demonstrated disc prolapse at L4-5, some mild foraminal encroachment, and mild degenerative changes at L5-S1. Dr. Kennedy did not believe that the claimant required surgery at that time and recommended physical therapy and trigger point injections. He noted that the claimant's symptoms and need for treatment were attributable to her injury at work.

¶ 15 The claimant returned to see Dr. Workman on October 25, 2010, complaining of low back pain radiating down both legs. Dr. Workman prescribed physical therapy, which the claimant underwent at Rehab Unlimited from November 2 through November 22, 2010.

¶ 16 The claimant was next seen by Dr. Workman on November 23, 2010. She reported that physical therapy had given her some temporary relief, but that her pain came back even worse.

¶ 17 On December 14, 2010, the claimant was examined by Dr. Lang at the request of General. Dr. Lang noted that the Waddell testing was moderately positive and that the claimant's objective neurological functions were normal. Dr. Lang reviewed the claimant's MRI scan and

noted degenerative disc changes at T11-12 and degenerative desiccation at L4-5 and L5-S1, which he found to be consistent with her age, gender, and nicotine exposure. Dr. Lang did not relate the claimant's current condition with her injury at work, reasoning that her initial symptoms on the right side had apparently resolved and her MRI showed no significant pathology on the right. According to Dr. Lang, it would be impossible to correlate the claimant's left side symptoms with her accident at work as those symptoms did not arise until three months after the incident. When deposed, Dr. Lang admitted that the twisting mechanism described by the claimant could cause or aggravate a herniated disc at L4-5 or L5-S1 or cause or aggravate an annular tear at L5-S1. He admitted that, if the claimant experienced left sided pain since her accident at work, he could link her complaints to the accident.

¶ 18 On referral from Dr. Workman, the claimant presented at the office of Dr. Jeffrey M. Jones, a neurosurgeon, on December 28, 2010. She was seen by Dr. Jones' physician's assistant. The claimant gave a history of having tripped on her shoelace and twisted her back while working six months earlier. She reported that heat, ice, and physical therapy had not relieved her pain. The claimant complained of back pain, radiating to the bottom of her foot. On examination, the claimant exhibited tenderness to palpation and a positive straight leg test on the left, which Dr. Jones testified was indicative of nerve root irritation, likely caused by disc herniation. Dr. Jones opined that the claimant's complaints were consistent with her MRI findings. An EMG was ordered and the claimant was referred for epidural steroid injections.

¶ 19 The claimant underwent an EMG of her lower extremities on January 17, 2011, which was interpreted as normal. However, an x-ray of the claimant's lumbar spine taken on February 1, 2011, demonstrated mild compression deformities to the T11-12 segments.

¶ 20 The claimant returned to see Dr. Jones on February 2, 2011. She reported that her leg pain which had begun in her right leg was mostly in her left leg radiating down into the top of her foot. Dr. Jones noted that the claimant's herniated disc at L4-5 was likely compressing the transversing L5 nerve root. As conservative treatment had failed to relieve the claimant's leg pain, Dr. Jones recommended that the claimant undergo surgery to relieve her pain.

¶ 21 On February 7, 2011, the claimant underwent an L4-5 and L5-S1 hemilaminotomy/laminectomy with foraminotomy which was performed by Dr. Jones. During the course of the surgery, Dr. Jones found a fresh annular tear at L5-S1 which he testified was consistent with the claimant's accident while working. Dr. Jones' postoperative diagnosis was L4-5, L5-S1 lateral recess and foraminal stenosis with radiculopathy.

¶ 22 The claimant treated with Dr. Jones postoperatively. Dr. Jones held the claimant off from work from the time of her surgery until March 16, 2011, when he released her to full-duty work, without restrictions.

¶ 23 Dr. Jones testified that the twisting accident at work which the claimant had described "was probably" the cause of her annular tear at L5-S1 and a factor in causing her need for surgery. He stated that, assuming the claimant tripped on her shoelace and twisted her back, the mechanism of her injury was consistent with the pain she described and the condition which he diagnosed. He also opined that the movement of the claimant's pain from one side to the other in terms of radicular complaints was possible because her disc herniations were central. According to Dr. Jones, the irritation due to central disc herniation could initially be on the left side of the nerve root and then retract and bulge out on the right side of the nerve root, particularly if the facet is more arthritic on the right side.

¶ 24 Following a hearing, the arbitrator issued a decision, finding that the claimant failed to prove that she sustained an accident that arose out of and in the course of her employment with General on June 10, 2010, and denying her benefits pursuant to the Act.

¶ 25 The claimant sought a review of the arbitrator's decision before the Commission. On January 11, 2013, the Commission issued a corrected decision, finding that the claimant's injury was not the result of an accident which arose out of and in the course of the claimant's employment with General. The Commission made its own findings of fact and conclusions of law, and did not adopt the decision of the arbitrator. The Commission found that the claimant was injured as a result of having stepped on her own shoelace. Concluding that the claimant's employment did not place her at a greater risk than a member of the general public, the Commission denied her benefits under the Act.

¶ 26 The claimant sought judicial review of the Commission's corrected decision in the circuit court of Williamson County. On June 28, 2013, the circuit court entered an order, holding that the Commission's determination that the claimant's injury was not the result of an accident which arose out of and in the course of her employment was against the manifest weight of the evidence. As a consequence, the circuit court reversed the Commission's corrected decision denying the claimant benefits under the Act and remanded the case back to the Commission for further proceedings. Thereafter, General filed a petition pursuant to Supreme Court Rule 306(a)(6) (eff. Feb. 16, 2011) for leave to appeal from the June 28, 2013 order. This court denied the petition on August 13, 2013.

¶ 27 On February 19, 2014, the Commission issued a decision on remand, awarding the claimant 37 2/7 weeks of temporary total disability (TTD) benefits, 75 weeks of permanent

partial disability (PPD) benefits for the loss of use of 15% of a person as a whole, and ordered General to pay the claimant's medical expenses subject to the applicable medical fee schedule.

¶ 28 General sought judicial review of the Commission's February 19, 2014, decision in the circuit court of Williamson County. On December 15, 2014, the circuit court entered an order confirming the Commission's decision on remand, and this appeal followed.

¶ 29 On appeal, General argues that the Commission's corrected decision of January 11, 2013, finding that the claimant's injury was not the result of an accident which arose out of and in the course of her employment is not against the manifest weight of the evidence and should be reinstated. As an alternative argument, General contends that the Commission's finding on remand that a causal connection exists between the claimant's accident of June 10, 2010, and her current lumbar condition is against the manifest weight of the evidence.

¶ 30 When, as in this case, an original decision of the Commission is reversed by the circuit court because it is against the manifest weight of the evidence and a new decision is entered on remand, this court initially considers the propriety of the Commission's original decision before reviewing the decision entered by the Commission following the remand. *Gilster Mary Lee Corp v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001).

¶ 31 In its corrected decision of January 11, 2013, the Commission found that the injuries suffered by the claimant as a result of her having stepped on her shoelace while working on June 10, 2010, did not arise out of and in the course of her employment with General. The Commission specifically found that, although the video in evidence established that the claimant was required to walk between work stations, "there was simply not sufficient evidence that [the claimant] was forced to work at a pace that would make her particularly susceptible to stepping

on her shoelace." In addition, the Commission found that the claimant "was not placed in greater risk of an injury from stepping on her shoelace than a member of the general public."

¶ 32 An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2008). Both elements must be present in order to justify compensation under the Act. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). "In the course of the employment" refers to the time, place and circumstances under which the employee is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366 (1977). Injuries which are sustained on an employer's premises and while an employee is at work are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). In this case, it is uncontested that, on June 10, 2010, the claimant was injured on General's premises while working. Consequently, her injuries were sustained as the result of an accident that arose "in the course of" her employment with General. The issue in this case is whether her injuries were sustained as a result of an accident that arose "out of" her employment.

¶ 33 Arising out of the employment refers to the origin or cause of an employee's injury. "For an injury to 'arise out of' the employment its origin must be 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.* at 58. A risk is considered incidental to the employment where it is part of, or connected with, what an employee is required to do in order to fulfill her duties. *Id.* In addition, an injury is said to arise out of the employment if the injured employee was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548 (1991).

¶ 34 There are three categories of risk which an employee might be exposed to: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). In this case, the claimant was injured as a result of tripping on her own shoelace. The risk of tripping on one's shoelace was certainly not a risk which was distinctly associated with her employment, and it did not arise from any personal characteristic of the claimant. The risk was a neutral risk.

¶ 35 Whether an injury caused by a neutral risk arises out of the employment is dependent upon whether the injured employee was exposed to the risk to a greater degree than the general public. *Id.* at 163. The increased exposure can be qualitative or quantitative. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011). A risk of injury is increased on a qualitative basis when some aspect of the employment contributes to the risk. A risk of injury is increased on a quantitative basis when the employee is exposed to the risk more frequently than that of the general public.

¶ 36 Nothing in the record could support the conclusion that the claimant was exposed to the risk of stepping on her shoelace more frequently than a member of the general public. The issue then is whether some aspect of the claimant's employment contributed to the risk of stepping on one's shoelace.

¶ 37 The Commission viewed the video of the woman performing the reverse torque procedure. Both the claimant and her co-worker, Clover, testified that the woman was moving too slow to process the number of projectiles needed to satisfy General's quota. Clover testified that the woman was moving at 1/3 of the speed an actual worker performing the task. The claimant testified that, at the time that she stepped on her shoelace, she was inspecting the

completed projectiles and turning to place them in the boxes. She stated that she was moving quickly to get the task done. As the claimant candidly states in her brief, she never testified that she fell because she was looking at the projectiles. The best that can be said of the evidence at arbitration is that the claimant was moving quickly in order to fulfill the quota. The Commission found, however, that there was insufficient evidence that she was forced to work at a pace that would make her particularly susceptible to stepping on her shoelace.

¶ 38 The determination of whether an injury arose out of the employment is a question of fact for the Commission to decide, and its resolution of the issue should not be disturbed on review unless it is against the manifest weight of the evidence. *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 885 (2000). In reaching its resolution of issues of fact, the Commission is entitled to make reasonable inferences from the evidence presented, and the reasonable inferences drawn by the Commission should not be rejected on review because the court might have drawn different inferences based upon the same evidence. *Id.* For the Commission's determination on an issue of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Id.*

¶ 39 In its order reversing the Commission's corrected decision, the circuit court found that the pace at which the claimant worked and the attention to detail required of her job placed her at greater risk than the general public. In defense of the circuit court's order reversing the Commission's corrected decision, the claimant relies on the holdings in *Knox County YMCA* and *Nabisco Brands, Inc. v. Industrial Comm'n*, 266 Ill. App. 3d 1103 (1994). Her reliance is misplaced.

¶ 40 In both *Knox County YMCA* and *Nabisco Brands*, the employees were injured while descending a staircase and carrying articles in their hands. Neither of the injured employees

testified that they fell as the result of being distracted by the items that they were carrying. In *Knox County YMCA*, the Commission inferred that the presence of the articles that the injured employee was carrying blocked her view or caused her to fall, and therefore awarded benefits under the Act. *Knox County YMCA*, 311 Ill. App. 3d at 885. In *Nabisco Brands*, this court found that the knives which the injured employee was carrying down the stairs increased the dangerous risk of injury when the employee fell. *Nabisco Brands*, 266 Ill. App. 3d at 1107. In this case, the Commission did not draw an inference of distraction and nothing in the evidence suggests that the projectiles that the claimant removed from the machine and was holding at the time that she stepped on her shoelace either blocked the claimant's view or caused her to lose balance, distinguishing the facts of this case from those present in *Knox County YMCA*. Unlike the facts in *Nabisco Brands*, there is no evidence in this case that the projectiles that the claimant was holding increased the risk of injury when she fell.

¶ 41 The Commission chose not to draw an inference that the claimant was distracted by the projectiles that she was holding when she stepped on her shoelace, and the claimant never testified that she was distracted. We are left then with the question of whether the pace at which she was required to work contributed to the risk of stepping on one's shoelace. The only evidence going to the question in this record is the fact that the claimant had a quota of processing 800 projectiles in a 2-hour period, the video, the testimony of the claimant and Clover that the woman depicted in the video performing the reverse torque procedure was moving slower than an employee would have to move in order to satisfy the quota requirement, and the claimant's testimony that she was moving quickly when she stepped on her shoelace. There is no evidence quantifying the speed at which the claimant was required to move in order to complete her tasks other than Clover's testimony that the woman in the video moved at 1/3 the speed that

an employee performing the reverse torque procedure was required to move, and the claimant only testified that she was moving quickly. The Commission concluded that there "was simply not sufficient evidence that [the claimant] was forced to work at a pace that would make her particularly susceptible to stepping on her shoelace."

¶ 42 It is the function of the Commission to determine the weight to be given to evidence. *Gilster Mary Lee*, 326 Ill. App. 3d at 183. In this case, the Commission determined in its corrected decision that the evidence of record was insufficient to establish that the pace at which that claimant was required to work made her susceptible to stepping on her shoelace. We cannot say from the scant evidence of record going to the speed at which the claimant was required to work that an opposite conclusion to that reached by the Commission is clearly apparent.

¶ 43 Based upon the foregoing analysis, we conclude that, in reversing the Commission's corrected decision of January 11, 2013, the circuit court erred when it substituted its judgment for that of the Commission as to the weight to be accorded to the evidence of record and the inferences to be drawn therefrom. As a consequence, we: vacate the circuit court's order of December 15, 2014; vacate the Commission's decision of February 19, 2014; reverse the circuit court's order of June 28, 2013; and reinstate the Commission's corrected decision of January 11, 2013, that denied the claimant benefits pursuant to the Act. In light of our resolution of General's first assignment of error, we need not address the question of whether the Commission's causation finding on remand is against the manifest weight of the evidence.

¶ 44 Based upon the foregoing analysis we: vacate the circuit court's order of December 15, 2014; vacate the Commission's decision of February 19, 2014; reverse the circuit court's order of June 28, 2013; and reinstate the Commission's corrected decision of January 11, 2013, denying the claimant benefits pursuant to the Act.

¶ 45 Reversed in part, vacated in part and Commission's decision reinstated.

¶ 46 JUSTICE STEWART, dissenting:

¶ 47 I respectfully dissent from the decision of my learned colleagues. In my view, Circuit Judge Brad Bleyer was correct in his decision reversing the decision of the Commission. His order provides, in pertinent part, as follows:

> "It is this court's opinion that the Commission's finding that the injury did not arise out of and in the course of Petitioner's employment is against the manifest weight of the evidence. The Commission found that there was insufficient evidence that Petitioner was forced to work at a pace that would make her particularly susceptible to stepping on her shoelace. The clear weight of the testimony shows otherwise. The Petitioner, whom the Commission specifically found to be credible, testified as to the pace at which she had to work to meet the employer's quota. A co-employee testified as to the requirements of the job and the pace required. Both testified that employer's video simulation was accurate as to the work environment, but inaccurate as to the necessary speed at which an employee was required to work. The Petitioner also testified as to the required focus on the job, which necessarily diverted her attention from an untied shoelace. The common accident of tripping over a shoelace at work would seldom, by itself, result in a compensable injury. Such tripping, in most instances, like walking down stairs at work would not establish a heightened risk to the employee over that of the general public. *Nabisco Brands, Inc. v.* [*Industrial Comm'n*], 266 Ill. App. 3d 1103 [(1994)]. However, the facts of this case clearly show that Petitioner, because of the pace and attention to detail required of this job, faced a

> risk greater than that faced by the general public. The rationale of *Nascote Industries v.* [*Industrial Comm'n*], 353 Ill. App. 3d 1056 [(2004),] seems applicable here. This court is mindful that it cannot substitute its judgment for that of the Commission. However, from a complete review of the record, it is the court's opinion that the finding of the Commission is against the manifest weight of the evidence and must be reversed."

¶ 48 I agree with the circuit court. As the majority notes, the claimant was required to walk between two work stations while processing only two projectiles at a time with a quota of 800 projectiles every two hours. This means she was required to complete the trip between work stations 200 times each hour, while inspecting projectiles. In my view, the risk of tripping and falling under those conditions, as a result of stepping on a shoelace or for any other reason, is beyond that to which the general public is exposed.

¶ 49 For the foregoing reasons, I would affirm the circuit court.