2016 IL App (4th) 150248WC-U
No. 4-15-0248WC
Order filed April 27, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

McLEAN COUNTY SCHOOL DISTRICT, UNIT 5,	)	Appeal from the Circuit Court of McLean County.
Appellant,	)	
v.	)	No. 14-MR-528
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, et al.,	)	Honorable Rebecca Simmons Foley,
(Doris Buxton, Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: Evidence did not support Commission's finding that claimant, who fell as she was descending a concrete island to the surface of a parking lot on respondent's premises, was exposed to a risk to a greater degree than the general public. As a result, Commission's finding that claimant sustained a compensable accident would be reversed.

¶ 2 Claimant, Doris Buxton, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)) alleging that she sustained injuries to various parts of her body when she fell in her employer's parking lot. Following a hearing, the arbitrator determined that claimant's accident was compensable and that her current condition of ill-being is causally related to her employment with respondent, McLean County School District, Unit 5. The arbitrator awarded claimant reasonable and necessary medical expenses, temporary total disability (TTD) benefits, and permanent partial disability (PPD) benefits. A majority of the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of McLean County confirmed. Respondent now appeals, challenging the Commission's finding that claimant sustained a compensable accident and its award of PPD benefits. We reverse.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing held on September 18, 2013. Claimant works for respondent as a bus driver. Claimant testified that she has held this position for more than seven years. Claimant was directed by respondent to park her bus in the bus lot at the end of her shift. The bus lot is not open to the public and is both gated and fenced in.

¶ 5 On March 1, 2012, claimant, then 61 years of age, returned from her bus route at approximately 4 p.m. After placing an "empty" sign in the back window of her bus, claimant exited the vehicle and stepped onto a concrete island located behind the bus. Claimant testified that the concrete island is higher than the surface of the parking lot, although claimant did not know the difference in elevation. While standing on the island, claimant plugged the bus battery into a charging unit. Claimant then began walking with two other bus drivers toward the bus

depot. After walking a few steps, claimant realized that she had forgotten her logbook on the bus. The logbook contained route sheets, which claimant had to turn in before clocking out for the day. Claimant turned and began walking in the direction of her bus to retrieve the logbook. As she stepped off the island onto the parking lot surface, claimant fell to the ground. Claimant did not know how she landed, but noticed that her head hurt.

¶ 6 At the time of the fall, claimant was wearing tennis shoes and carrying a sack. Claimant testified that the sack contained a bottle of pop, her partially-eaten lunch, and a billfold. Claimant testified that the food and drink were used as nourishment while she was driving the bus for respondent. Claimant was also carrying car keys, identification, and a small billfold in her coat pocket. Claimant testified that as she walked back to the bus, she was concerned about retrieving her logbook and checking out on time. She acknowledged, however, that she was not in a hurry to clock out or do anything else. Claimant was unable to recall if the fall was due to any defect on the concrete island, and she denied losing her balance. She stated, however, that her height (5'2") and weight (275 pounds) could possibly affect her gait. She also noted that she had undergone surgery to repair the meniscus to her right knee following a work-related injury in January 2010, and her knee occasionally gets stiff.

¶ 7 Following the fall, claimant was transported by ambulance to the emergency room. The paramedics recorded a history that claimant was "walking and stepped off a curb in the parking area and fell to the asphalt striking her head." At the hospital, claimant reported that she "had forgotten her book on the bus, *** turned around quickly to go and get it and *** tripped on the curb, falling backwards and striking her head on the ground." Claimant reported a mild headache, and medical personnel noted an abrasion to the posterior aspect of claimant's scalp. A CT scan of the brain showed a focal right frontoparietal scalp hematoma. Claimant was

diagnosed with a cervical strain and closed-head injury with scalp abrasion. Claimant was prescribed Flexeril and Motrin and told to follow up with her primary-care physician. Claimant was also given a release from work for March 2, 2012.

¶ 8 On March 5, 2012, claimant presented to Advocate Medical Group (Advocate) for follow up. At that time, claimant gave a history of falling and hitting her head on concrete on March 1, 2012. Claimant complained of headache pain at level 2 on a 10-point scale. She also complained of neck stiffness and difficulty turning her head from side to side. Claimant was diagnosed with a neck strain and a head injury. She was advised to continue taking pain relievers and muscle relaxers and authorized to stay off work until reevaluation in three to four days. Claimant returned to Advocate on March 9, 2012. She reported that her headaches were the same and that she was experiencing dizziness with movement. She also continued to complain of neck stiffness and difficulty turning her head left and right. Claimant was taken off work due to decreased rotation of her neck due to pain. Claimant presented to Advocate again on March 15, 2012. She reported no improvement with her headaches. She also complained of intermittent dizziness, particularly with movement and head turning, and some blurred vision the day before, which resolved after a few seconds. Claimant was authorized off work through March 23, 2012.

¶ 9 On March 20, 2012, claimant began treating with chiropractor Monica Schnack. Schnack's initial report provides that claimant's injuries occurred during a fall when she "[s]lipped on ice trying to board school bus and hit [her] head on concrete." Claimant reported constant pain and stiffness in the neck, constant dull headaches in the back of the head, light headedness, and frequent pain and stiffness in the right mid back. Claimant began a course of treatment with Schnack. Schnack released claimant to return to work effective April 9, 2012,

although she continued to treat claimant. Schnack also referred claimant to Dr. Fang Li, a neurologist, for evaluation of her head.

¶ 10 Claimant presented to Dr. Li on September 20, 2012. At that time, claimant reported the onset of recurrent headaches after a head injury early in March 2012. Claimant told Dr. Li that she slipped off a curb at work and hit her head. Thereafter, she complained of frequent headaches, two to three times a week, mostly on the right side, with occasional radiation to the cervical or bifrontal regions. Claimant reported some nausea with the headaches, but denied any dizziness. Claimant reported that over-the-counter analgesics and Ultram provided some relief from the headaches. Claimant gave a history of occasional headaches in the past, but stated that she was never formally diagnosed with migraines. Following an examination and diagnostic tests, Dr. Li's impression was recurrent headaches after trauma. Dr. Li prescribed low-dose Topamax. Dr. Li also limited claimant's use of Ultram to no more than once a day on an as-needed basis.

¶ 11 Claimant's final treatment with Schnack was on September 24, 2012. At that time, claimant complained of pain in the bilateral region of the neck, stiffness in the neck, muscle spasm in the neck, grinding/grating sounds in the neck, dull headaches, and light-headedness. On October 5, 2012, claimant presented to Advocate and reported that she was treating with Dr. Li for her headaches. On November 7, 2012, claimant presented to Advocate for unrelated problems. At that time, claimant did not mention any problems with respect to her neck or her headaches. Claimant last treated with Dr. Li on January 23, 2013. Claimant told Dr. Li that she had gone off Topamax and had frequent migraines. Claimant was instructed to continue taking Ultram and restart Topamax. Claimant was also instructed to follow up in three to six months.

¶ 12 At the arbitration hearing, claimant testified that she continues to work full duty for respondent and is able to perform all the duties of her job as a bus driver. Claimant testified that since her accident, she has missed six or seven days of work because of migraine headaches. Claimant testified that as long as she takes her medication, her headaches and neck pain do not interfere with her ability to perform her work for respondent. Claimant testified that she continues to take Topamax to control her migraines. She denied experiencing any migraines or concussions prior to the injury on March 1, 2012. She also testified that she continues to experience some discomfort when she turns her head to the right.

¶ 13 Joseph Adelman, respondent's director of operations, testified that he inspected the concrete island within 24 hours of claimant's fall and found no defects in the structure. In addition to Adelman's testimony, respondent offered into evidence a video recording of claimant's fall.

¶ 14 Based on the foregoing evidence, the arbitrator concluded that claimant sustained an accident arising out of and in the course of her employment with respondent. Specifically, after reviewing the videotape of claimant's fall, the arbitrator found that claimant's "right foot slipped off the concrete island as she was stepping down to the parking lot to reenter her bus and retrieve her logbook." The arbitrator found significant Schank's initial report which provided that claimant "slipped on ice trying to board the school bus and hit [her] head on concrete." The arbitrator noted that respondent offered no evidence to rebut the fact that there may have been some ice on the edge of the concrete island that caused claimant to fall. The arbitrator also found significant that (1) the accident occurred in an area not open to the general public, (2) claimant reported to emergency-room personnel that she "turned around quickly to go and get [the log notebook]," and (3) claimant was carrying a sack that contained food used for

nourishment while she was driving the bus. As a result, the arbitrator reasoned that claimant was exposed to a greater risk than the general public and therefore sustained an accidental injury arising out of and in the course of her employment. The arbitrator also found that claimant's current condition of ill-being is causally related to her injury. The arbitrator awarded claimant reasonable and necessary medical expenses subject to a credit, TTD benefits of $220 per week for a period of 4-6/7 weeks, and PPD benefits of $220 per week for a period of 10 weeks, representing a two percent loss of the person as a whole.

¶ 15 A majority of the Commission affirmed and adopted the decision of the arbitrator. Commissioner White dissented. Citing *Caterpillar v. Industrial Comm'n*, 129 Ill. 2d 52 (1989), Commissioner White noted that an idiopathic fall in an employee parking lot is not compensable under the Act unless there is some defect or inherently unsafe condition in the area of the fall. After reviewing the recording of claimant's fall, Commissioner White concluded that there was no evidence of any defect or unsafe condition in the parking lot. Commissioner White also found that there was no evidence that claimant was in a hurry or that the sack she was holding contributed to her fall. As a result, Commissioner White concluded that claimant's employment did not expose her to any greater risk than a member of the general public. On judicial review, the circuit court of McLean County confirmed the decision of the Commission. This appeal by respondent followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent first argues that the Commission's finding that claimant sustained a compensable accident is against the manifest weight of the evidence. The purpose of the Act is to protect an employee from any risk or hazard which is peculiar to the nature of the work he or she is employed to do. *Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674

(2009). As such, to be compensable under the Act, an employee must establish by a preponderance of the evidence both that his or her injuries "arose out of" and "in the course of" his employment. *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 489 (2004).

¶ 18 The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Injuries sustained on an employer's premises, or at a place where the employee might reasonably have been while performing his duties, and while the employee is at work, are generally deemed to have been received "in the course of" one's employment. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013-14 (2011). In this case, respondent does not dispute that claimant's injuries were sustained in the course of her employment. Indeed, the accident occurred on respondent's premises during claimant's regular work hours. See *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477-78 (2011). Thus, we turn to whether claimant sustained her burden of establishing that her injuries "arose out of" her employment with respondent.

¶ 19 As a general rule, whether an injury "arose out of" one's employment is a question of fact for the Commission to resolve. *Litchfield Healthcare Center*, 349 Ill. App. 3d at 489. In resolving questions of fact, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny*, 397 Ill. App. 3d at 674. A court of review will not overturn the Commission's finding on a question of fact unless it is against the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 674; *Knox County YMCA v.*

Industrial Comm'n, 311 Ill. App. 3d 880, 885 (2000). For a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Skzubel v. Illinois Workers' Compensation Comm'n,* 401 Ill. App. 3d 263, 267 (2010). 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. *Potenzo v. Illinois Workers' Compensation Comm'n,* 378 Ill.App.3d 113, 119 (2007). We find this to be such a case.

¶ 20 For an injury to "arise out of" one's 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. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. To determine whether a claimant's injury "arose out of" his or her employment, we must first categorize the risk to which he or she was exposed. *First Cash Financial Services v. Industrial Comm'n,* 367 Ill. App. 3d 102, 105 (2006). Illinois courts group the risks to which an employee may be exposed into three general categories: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks that have no particular employment or personal characteristics. *Baldwin*, 409 Ill. App. 3d at 478; *First Cash Financial Services*, 367 Ill. App. 3d at 105; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162.

¶ 21 Employment risks are "inherent in one's employment" and "include the obvious kinds of industrial injuries and occupational diseases and are universally compensated." *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162; *Illinois Consolidated Telephone Co. v. Industrial Comm'n,* 314 Ill. App. 3d 347, 352 (2000) (Rakowski, J., specially concurring). In this case, claimant fell as she was stepping off a concrete island to the surface of a parking lot. There is no evidence that the risk of this type of injury is distinctly associated with claimant's

employment with respondent. As such, we are not presented with an employment risk. Personal risks include exposure to elements that cause nonoccupational diseases, personal defects, or weaknesses. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring); see also *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. Although generally noncompensable, personal risks may be compensable where conditions of the employment increase the risk of injury. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163, n.1. In this case, claimant indicated that her knee occasionally became stiff due to a prior work injury. She also testified to the possibility of an altered gait due to her height and weight. However, there is no evidence that her fall was the result of any of these conditions. Thus, we conclude that this case does not involve a personal risk.

¶ 22 Having eliminated the first two types of risks, we find that claimant's fall may be properly categorized as resulting from a neutral risk. See *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring). Injuries caused by a neutral risk generally do not arise out of the employment and are compensable under the Act only if the employee was exposed to a risk to a greater degree than the general public. *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1014. "The 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." *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 117 (2007). Accordingly, resolution of this appeal centers on whether claimant presented sufficient evidence to establish that she was exposed to a risk greater than that of the general public.

¶ 23 As noted previously, claimant fell as she was descending a concrete island to the surface of the parking lot. By itself, traversing a curb does not establish a risk greater than that faced by the general public. See *Caterpillar Tractor Co.*, 129 Ill. 2d at 62 ("Curbs, and the risks inherent in traversing them, confront all members of the public."); *Nee v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 132609WC, ¶ 22 ("[T]he risk associated with traversing a curb is neutral in nature."); *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1014 (noting that traversing a public sidewalk and commercial driveway constitutes a neutral risk); *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring) (explaining that in the context of falls, neutral risks include falls on level ground or while traversing stairs). Nevertheless, the Commission found that claimant was exposed to the risk of traversing a curb to a greater degree than the general public. In support of this conclusion, the Commission, in affirming and adopting the decision of the arbitrator, cited evidence that: (1) there may have been some ice on the edge of the concrete island that caused claimant to fall; (2) the accident occurred in an area not open to the general public, (3) claimant told emergency-room personnel that she "turned around quickly," and (4) claimant was carrying a sack with food used for nourishment while she was driving the bus. We conclude that none of these factors supports a finding that claimant was exposed to a risk to a greater degree than the general public.

¶ 24 Initially, we note that the record does not support the Commission's finding as to the existence of ice on the concrete island. The basis for the Commission's finding is Schnack's initial report which provides that claimant *"[s]lipped on ice* trying to board school bus and hit [her] head on concrete." (Emphasis added.) The Commission noted that neither party offered into evidence a weather report for the date of the accident. Further, the Commission found that

respondent did not otherwise offer any evidence to rebut the fact that there may have been some ice on the edge of the concrete that caused claimant to slip. However, the evidence of record establishes that the fall on ice was a *different* event.

¶ 25 In this regard, Schnack's records contain a history form completed by claimant. The eighth question on the form asked claimant to describe the accident in her own words. In response, claimant wrote that she "[s]lipped or tripped on curb going back to bus." The fourteenth question on the form asked if claimant had any other serious accidents which required medical care. Claimant responded in the affirmative and described the accident as follows: "Fell on ice—had knee surgery." The earlier accident, including the fact that it occurred when claimant slipped on ice, is also referenced in other medical records admitted into evidence. For instance, a progress note from Advocate dated June 21, 2010, provides "[claimant] states that in January she slipped on some ice and fell onto her right lower extremity." Moreover, when Dr. Li first saw claimant, she recorded the following history: "[S]lipped ~~on ice on~~ off a curb." (Strikethrough in original.) The fact that the history recorded by Dr. Li initially referenced a slip on ice, but she later deleted this reference, supports a finding that ice was not present when claimant fell in March 2012. In fact, claimant did not testify at the arbitration hearing that the presence of ice contributed to her fall on March 1, 2012, and the contemporaneous medical records do not reference an ice-related fall. Clearly, the fall in March 2012 and the fall on ice were two distinct events. Schnack confused the falls in her record when she stated that the March 1, 2012, fall resulted from a slip on ice, and the Commission propagated this error in adopting the arbitrator's decision.

¶ 26 As noted above, the Commission also cited the fact that the parking lot where claimant fell was for the exclusive use of respondent's employees. However, the Commission did not cite

any authority that this fact converted the fall into a compensable accident. Indeed, there was no evidence as to how this fact contributed to the fall or that it somehow exposed claimant to a risk uncommon to the general public. See *Caterpillar Tractor Co.*, 129 Ill. 2d at 62 (holding that the claimant, who fell while walking from plant to employee parking lot did not establish that he was exposed to a risk greater than the public at large since the curb involved in the claimant's accident was no different than any other). Similarly, although claimant was holding a sack at the time of the fall, there was no evidence that the sack or its contents caused her to lose her balance or otherwise contributed to the accident. *Nee*, 2015 IL App (1st) 132609WC, ¶ 25 (noting that although the claimant carried a clipboard during his job duties, there was no evidence that carrying this item caused or contributed to his tripping on a curb); but see *Knox County YMCA*, 311 Ill. App. 3d at 885 (finding that claimant's fall was compensable because she was holding objects connected to here employment and the Commission could reasonably infer that the items blocked her view or caused her to lose her balance). In addition, although the emergency-room record reflects that claimant "turned around quickly," claimant expressly denied that she was in a hurry to clock out or do anything else. *Cf. William G. Ceas & Co. v. Industrial Comm'n*, 261 Ill. App. 3d 630, 636-37 (1994) (finding the claimant's fall compensable where evidence showed that the claimant had been in a hurry to deposit an envelope for her employer in an express mail mailbox before the deadline for overnight shipping). Thus, when read in context, the fact that the emergency-room record states that claimant "turned around quickly" loses any significance it may have had standing alone. Finally, we point out that claimant was unable to recall any defect in the concrete island at the time of her fall, and Adelman's inspection of the structure the following day did not reveal any defects. See *First Cash Financial Services*, 367 Ill. App. 3d at 106 ("Employment related risks associated with injuries sustained as a consequence of a fall are

those to which the general public is not exposed such as the risk of tripping on a defect at the employer's premises."); *Best Foods v. Industrial Comm'n*, 231 Ill. App. 3d 1066, 1070 (1992) (denying compensation because record did not establish that the claimant's fall was caused by the condition of the sidewalk).

¶ 27 In sum, we conclude that the evidence does not support a finding that claimant sustained an accident arising out of her employment as a bus driver for respondent. It therefore follows that the Commission's finding that claimant sustained a compensable accident is contrary to the manifest weight of the evidence. Given our finding, we need not address respondent's alternate argument that the Commission's award of PPD benefits was also against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

¶ 29 For the reasons set forth above, we reverse the judgment of the circuit court of McLean County and the decision of the Commission, which was against the manifest weight of the evidence.

¶ 30 Reversed.