2017 IL App (1st) 170395WC-U

Workers' Compensation
Commission Division
Order Filed: December 22, 2017

No. 1-17-0395WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

LINDA GRAY,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	No. 16 L 50203
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Ann Collins-Dole,
(Bank of America, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant's current condition of ill-being did not arise out of and in the course of her employment with the Bank of America is not against the manifest weight of the evidence.

¶ 2 The claimant, Linda Gray, appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) denying her benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West

2012)), for an injury she sustained to her left leg on April 13, 2013, during a volunteer event with the Girl Scouts, while in the employ of Bank of America (Bank). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on December 1, 2014, and February 18, 2015.

¶ 4 At all times relevant, the claimant was employed by the Bank as a project manager. She also volunteered as a co-chairperson for the Bank's Community Volunteers Team Illinois (Community Volunteers), one of several groups within the Bank that offered employees opportunities for networking, professional development, and volunteering. On April 8, 2013, she received an email from another bank employee, Zammy Arcos, who was involved with a different employee group, LEAD for Women Chicago (LEAD). In the email dated April 8, Arcos thanked the claimant "[o]n behalf of LEAD" for volunteering to help clean a Girl Scouts' campground in Woodridge, Illinois, on Saturday, April 13, 2013. That day, the claimant attended the event with 15 to 20 Bank employees, their family and friends, and members of the Girl Scouts. While picking up branches, she fell and broke her left leg. Due to her injury, she required surgery, underwent physical therapy, and remained off work from the date of the accident until October 1, 2013.

¶ 5 The claimant testified that she had worked for the Bank for 25 years and, during that time, separately progressed both in her career as a project manager and her leadership role in the Community Volunteers. According to the claimant, her position in the Community Volunteers is "part of [her] overall job," but involves "different roles and responsibilities" from her work as a project manager. As a project manager, she is responsible for ensuring that the Bank's employees "have the right access to the right systems," and typically works from home 45-50 hours per

week. As a co-chairperson of the Community Volunteers, she supervises 5 volunteer committees comprising approximately 30 members, attends networking events to help the Bank partner with nonprofit organizations, and encourages different businesses within the Bank to network with each other through volunteer work. She stated that, in this role, she is required to attend volunteer events but was never reprimanded for failing to appear and that her salary is the same irrespective of whether she volunteers.

¶ 6 The claimant further testified that, because her position as a project manager requires her to be on duty "24/7," she requested to attend the Girl Scouts' event using paid time-off pursuant to a company policy that grants employees two hours of paid time per week for volunteering. She brought business cards to the event and, together with other attendees, wore a shirt provided by the Bank, labeled "Bank of America Community Volunteers." She photographed employees wearing the shirts for the Bank's newsletter, but did not recall distributing her business cards or discussing the Bank's services with anyone at the event.

¶ 7 The claimant stated that she believed the Bank "sponsored" the Girl Scouts' event and that, in general, her volunteering activities are a form of marketing intended to increase the Bank's customer base. According to the claimant, the Bank sets a nationwide goal for the total number of hours its employees will volunteer each year, and the Community Volunteers group sets another goal specifically for employees in Illinois. Additionally, the claimant stated that the Bank requires all employees to report their volunteer hours in a computer system and provides recognition points for volunteering, which entitles employees to cash, gifts, and grants for nonprofit organizations. In addition to this testimony, she produced an email that she received

from the Community Volunteers, dated July 28, 2014, which described a "newly approved" program for nominating and awarding employees for their volunteer work.[1]

¶ 8 The claimant's evidence also included a performance review dated February 26, 2014, in which her supervisor, Sam Schwartz, commended her for "leveraging" the Bank's volunteer programs. The performance review contained sections authored by the claimant, in which she described her volunteer work as an element of her professional development. In addition, the claimant produced: (1) expense reports that she submitted for parking and mileage in connection to volunteering events; (2) a letter from the Bank's chief executive officer, dated June 4, 2013, thanking her for helping the Bank reach its annual goal for volunteer hours; and (3) Bank documents that instructed employees about planning volunteer events, listed volunteering as an element of professional development, and described volunteers as "the human face of the [B]ank in our communities."

¶ 9 The Bank presented the testimony of three employees: Shanna Bentley, Arcos, and Schwartz. Together, their testimony established that the Bank encourages volunteerism and that its employee handbook permits employees to volunteer two hours per week while still receiving their normal salary or hourly pay. However, the Bank does not pay employees for volunteering or grant paid time-off for volunteer work performed outside of an employee's normal work schedule. The Bank has no policy that requires volunteerism, imposes a minimum number of volunteer hours on each employee, or makes compensation, bonuses, raises, or promotions contingent on volunteering. There are no negative repercussions if employees do not record any volunteer hours in the Bank's online system or if the Bank does not meet its annual goal for

[1] Counsel for the Bank objected to this email as hearsay and, in response, the arbitrator stated that it would not be considered for the truth of the matter asserted.

hours volunteered. Bentley stated that the Bank's points program for employee recognition "has nothing to do" with the number of hours that employees volunteer, and Arcos stated that she considered her volunteer work to be separate from her job duties.

¶ 10 Schwartz, who testified by evidence deposition, stated that the claimant's role in the Community Volunteers is "not within the job responsibilities of her employment" as a project manager. According to Schwartz, the claimant's performance review mentioned her volunteer work due to its "indirect value in her[ ] *** overall performance," but he "was not privy" to the number of volunteer hours that she logged into the Bank's system and he never awarded her points for volunteering. Schwartz stated that the Girl Scouts' event occurred outside of the claimant's normal work schedule, she did not receive compensation or reimbursement for volunteering that day, and that he did not know she attended the event until after the accident occurred. Schwartz acknowledged that he previously allowed the claimant to file expense reports for volunteering, but later learned it was against company policy. He did not believe that the Bank received "any direct benefit" from employees volunteering, other than improved morale.

¶ 11 In rebuttal, the claimant testified that she apprised Schwartz that she planned to attend the Girl Scouts' event, and that she always informed him when she would be unavailable due to volunteering, both during the week and on weekends. She stated that Schwartz had access to data regarding her volunteer hours, and that supervisors were permitted to grant employees points for volunteering. On cross-examination, she acknowledged that she did not produce evidence that the Bank generated business from the Girl Scouts' event.

¶ 12 Following a hearing held on December 1, 2014, and February 18, 2015, the arbitrator found that the claimant was ineligible for benefits under the Act because her injury did not arise out of and in the course of her employment. More specifically, the arbitrator determined that the

claimant was not "ordered or assigned" to attend the Girl Scouts' event, but, instead, participated "under her own volition." The arbitrator stated that, although the Bank encouraged its employees to volunteer, the claimant was not paid to volunteer, her performance reviews were not contingent on her volunteering activities, and her duties as a project manner were unrelated to her role as a co-chairperson of the Community Volunteers, a position for which she was neither "hired [n]or compensated ***." Additionally, the arbitrator found that any benefit the Bank accrued from the claimant's presence at the Girl Scouts' event was "tenuous and intangible ***."

¶ 13 The claimant filed a petition for review of the arbitrator's decision before the Commission. On February 10, 2016, the Commission affirmed and adopted the arbitrator's decision.

¶ 14 The claimant sought a judicial review of the Commission's decision in the circuit court of Cook County. On January 20, 2017, the circuit court confirmed the Commission's decision.

¶ 15 The claimant now appeals, arguing that the Commission erred in finding that her injury did not arise out of and in the course of her employment.

¶ 16 When, as in the present case, an appeal is taken following entry of judgment by the circuit court on review of the decision of the Commission, this court reviews the ruling of the Commission, not the judgment of the circuit court. *Dodaro v. Illinois Workers' Compensation Comm'n*, 403 Ill. App. 3d 538, 543 (2010). As an initial matter, the parties disagree regarding our standard of review. The claimant contends that we should apply *de novo* review because the only issue is whether the undisputed facts established that her injury arose out of and in the course of her employment. See *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 279 (2011) (a reviewing court should apply the *de novo* standard when only a

single inference can be drawn from the undisputed facts). The Bank, on the other hand, argues that we should employ the manifest weight of the evidence standard, as the parties ask this court to evaluate the Commission's factual findings and the inferences drawn thereon. See *id.* (this court must review Commission decisions under the manifest weight of the evidence standard when the facts are disputed or "more than one reasonable inference might be drawn from the facts."). We agree with the Bank and apply the manifest weight standard of review in this case.

¶ 17 It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a reviewing court might reach the opposite conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence; rather, the appropriate test is "whether there is sufficient evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). "[A] decision is against the manifest weight of the evidence only when the evidence is viewed in the light most favorable to the Commission and the court determines that no rational trier of fact could have agreed with the Commission's decision." *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624 (1999).

¶ 18 A claimant may recover under the Act only if she proves by a preponderance of the evidence that her injury arose out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). An injury "arises out of" employment if its origin is "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. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). Injuries are generally deemed to have been received "in the course of" employment if they are sustained on the employer's premises, or at a

place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, or within a reasonable time before and after work. *Id.* at 57; see also *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 22. Where an employer knows and acquiesces in a custom of an employee to engage in work different from that she was hired to perform, an injury while performing such work arises out of the employment. See *Sunnyside Coal Co. v. Industrial Comm'n*, 291 Ill. 523, 526 (1920).

¶ 19 Here, the Bank concedes that it knew and approved of the claimant's participation in the Girl Scouts' event, but argues that the event was a voluntary recreational activity beyond the scope of her employment. The Bank, therefore, submits that the present case is controlled by section 11 of the Act (820 ILCS 305/11 (West 2012)), a provision not cited in either the claimant's initial brief on appeal or reply brief. Under section 11 of the Act, "[a]ccidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof," unless "the injured employee was ordered or assigned by his employer to participate in the program." *Id.* " '[A]ssign' is defined as, '[t]o set apart for a particular purpose; designate,' '[t]o select for a duty or office; appoint,' or '[t]o give out as a task; allot.' " *Gooden v. Industrial Comm'n*, 366 Ill. App. 3d 1064, 1066 (2006) (quoting the American Heritage Dictionary of the English Language 79 (1969)). In determining whether an activity is voluntary, relevant factors include: the extent to which the employer benefits from the employees' attendance at the outing; the extent to which the employer actively organizes and runs the recreational event; and the extent to which the employer sponsors and compels attendance at the event. *Fischer v. Industrial Comm'n*, 142 Ill. App. 3d 298, 303 (1986) (citing *Gourley v. Industrial Comm'n*, 84 Ill. 2d 303 (1981)).

¶ 20 The claimant raises no argument challenging the recreational character of the Girl Scouts' event, nor does she allege that her participation in a recreational activity was inherent in her duties as a project manager. See *Elmhurst Park District v. Illinois Workers' Compensation Comm'n*, 395 Ill. App. 3d 404, 409 (2009) (examining whether the claimant was injured in an activity "inherent" to his job). She contends, instead, that her involvement in the Girl Scouts' event was involuntary and, therefore, arose out of and in the course of her employment. More specifically, she argues that she would not have attended the Girl Scouts' event but for her employment and that she was "compelled" to participate due to her position as a co-chairperson of the Community Volunteers, and also due to the Bank's policies, which both incentivize and pressure employees to volunteer. Additionally, she submits that the Bank benefitted from marketing itself on the shirts distributed at the event and, more generally, arranged volunteer programs in order to promote employee development and expand its customer base.

¶ 21 Whether an employee has been ordered or assigned to participate in an activity, such that participation in the activity was involuntary, is generally a question of fact to be determined by the Commission. *Woodrum v. Industrial Comm'n*, 336 Ill. App. 3d 561, 564 (2003). Based upon the record before us, we conclude that the Commission's finding that the claimant's current condition of ill-being did not arise out of and in the course of her employment is not against the manifest weight of the evidence.

¶ 22 In this case, no evidence established that the claimant was expressly assigned to attend the Girl Scouts' event as a condition of her employment with the Bank. Compare *Pickett v. Industrial Comm'n*, 252 Ill. App. 3d 355, 358-59 (1993) (finding the Commission's decision to grant benefits to an employee whose injury occurred during an employer-sponsored basketball game was against the manifest weight of the evidence where no evidence suggested that the

employer ordered or assigned him to play or that he faced repercussions for declining to participate) with *Law Offices of William W. Schooley v. Industrial Comm'n of Illinois*, 151 Ill. App. 3d 1069, 1074 (1987) (finding the Commission's decision to deny benefits to an employee whose injury incurred while playing on the employer's softball team was against the manifest weight of the evidence where the claimant "was directed to manage the team and play, if necessary."). Further, while the claimant testified that she worked "24/7" and requested to attend the event under the company's paid time-off policy, Schwartz testified that the event was outside of her work schedule and that she did not receive compensation or reimbursement for her activities that day. The claimant, moreover, acknowledged that she was never reprimanded for failing to appear at an event, and her salary was unaffected by whether she volunteered. *Cf. Woodrum*, 336 Ill. App. 3d at 564-65 (reversing the Commission's decision that the claimant's injuries, which incurred during a basketball game at a company picnic, were not compensable where he was assigned to attend the function or forego his salary and, therefore, his participation was involuntary as a matter of law).

¶ 23 The record also contains ample support for the conclusion that neither the claimant's role in the Community Volunteers nor the Bank's policies promoting volunteerism compelled her to participate in the Girl Scouts' event. Schwartz testified that the claimant's volunteer role is "not within the job responsibilities of her employment," and, together with Arco and Bentley, denied that the Bank requires volunteerism, makes compensation or recognition contingent on volunteering, or disciplines employees for failing to record their volunteer hours or meet the company's annual goal for hours volunteered. While the claimant presented evidence to the contrary, including her own testimony, commendations that she received for volunteering, and documents purporting to set forth the Bank's policies regarding volunteerism, it was the function

of the Commission to resolve conflicts in the evidence, and we will not substitute our judgment simply because different inferences could have been drawn. See *O'Dette*, 79 Ill. 2d at 253.

¶ 24 Given the substantial evidence supporting the Commission's finding that the claimant's participation in the Girl Scouts' event was not ordered or assigned, we reject her contention that this case is similar to, and controlled by, *Jewel Tea Co. v. Industrial Comm'n*, 6 Ill. 2d 304, 315-16 (1955) (affirming the Commission's decision that the claimant's injuries incurred during a company softball game were compensable where he participated due to pressure exerted by a representative of a district manager, who ran the team and was responsible for recommending promotions). Notably, while the supreme court in *Jewel Tea* also identified other factors relevant to its determination—including both the close integration of the employer and its softball teams, and the benefit to the employer from its employees advertising its name on their shirts and interacting with management (*id.* at 314-15)—none of those factors, in the present case, establish that the Commission's findings were against the manifest weight of the evidence. To the contrary, the parties introduced conflicting testimony as to whether the Bank sponsored the Girl Scouts' event and, although the claimant testified that participants wore the Bank's shirts, no evidence demonstrated how the Bank benefited from the event but for its possible effect on employee morale. See *Fischer*, 142 Ill. App. 3d 298 at 304 (finding that "improvement in employment relationships *** is often a weak indicator of the employer's involvement because any social contact between workers can benefit working relationships, whether the social contact is work-connected or not."). These circumstances distinguish this case from situations where employers used recreational events to cultivate existing business relationships (see, *e.g.*, *Lybrand, Ross Brothers & Montgomery v. Industrial Comm'n*, 36 Ill. 2d 410, 418 (1967)) or obtain new clients (see, *e.g.*, *Law Offices of William W. Schooley*, 151 Ill. App. 3d at 1071)). As

such, the record does not demonstrate the Commission's conclusion that any benefit the Bank accrued from the claimant's presence at the Girl Scouts' event was "tenuous and intangible" is against the manifest weight of the evidence.

¶ 25 Based on the foregoing analysis, we find that the Commission's determination that the claimant's current condition of ill-being did not arise out of and in the course of her employment is not against the manifest weight of the evidence and, therefore, the Commission did not err in finding that she was ineligible for benefits under the Act. Therefore, we affirm the judgment of the circuit court which confirmed the Commission's decision in this case.

¶ 26 Affirmed.