2018 IL App (4th) 180037WC-U

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November 7, 2018
Carla Bender
4th District Appellate
Court, IL

NO. 4-18-0037WC

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LORI CROWDER, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (City of Springfield, Appellee).	))))))))	Appeal from Circuit Court of Sangamon County No. 16MR956 Honorable Esteban F. Sanchez, Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's finding that claimant failed to prove that her injury arose out of her employment was against the manifest weight of the evidence and it committed error in denying claimant compensation under the Act.

¶ 2 On May 1, 2014, claimant, Lori Crowder, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). She sought benefits from her employer, City of Springfield (City), claiming she fractured her ankle on February 14, 2014, in a work-related accident when she slipped and fell on a City owned snow-covered walkway while on her break. Following a hearing, the arbitrator found claimant

failed to prove that the accidental injury she sustained arose out of her employment and denied her benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision, over a dissent. On judicial review, the Sangamon County circuit court affirmed the Commission's decision, concluding it was not against the manifest weight of the evidence. Claimant appeals, arguing the Commission's decision that she failed to prove her accidental injury arose out of her employment was against the manifest weight of the evidence. We reverse and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On July 30, 2015, the arbitration hearing was conducted with claimant as the only testifying witness. She testified she had worked for the City as the administrative zoning secretary for six years. She typically began her work shift at 8 a.m., taking two 15-minute breaks during the day. During those breaks, she would often walk around outside, get a snack, or purchase coffee from a nearby coffee shop. Although coffee was available inside the building, she preferred the coffee at Starbucks, located one block north of the building.

¶ 5 The building which housed the City's zoning department had two entrances: one on the east side of the building and one on the west side. The entrance on the east side of the building was used primarily by employees, as it was closer to the employee parking area. The door on this side of the building was locked and could only be accessed by swiping an employee badge. Members of the general public were not prohibited from using this east entrance, but they would be unable to gain access to the building unless or until the door was opened for them. The entrance on the west side of the building was considered the main entrance and was open to members of the general public. Claimant agreed that whether she exited the west door or the east door, the distance to Starbucks was essentially the same.

¶ 6 On February 14, 2014, on their morning break, claimant and her coworker Barb Jones planned to walk one block north to Starbucks to purchase coffee. It was snowing that morning. A continuous feed surveillance video was introduced at the hearing. The video showed, as of 7:30 a.m., snow had fallen and had accumulated in the grassy areas. The walkway appeared to have been shoveled but wet spots remained. At approximately 8:15 a.m., the walkway was snow covered. At approximately 9 a.m., someone was shoveling the walkway with a snow-bladed lawn tractor. By 9:11 a.m., the walkway was covered with what appeared to be a dusting of snow.

¶ 7 Claimant and Jones exited the building through the "front door," the west entrance. The video shows claimant falling at 9:11 a.m. on the walkway. This walkway connects the west entrance and the main sidewalk. The walkway is part of a plaza. The plaza contains a fountain directly west of the stairs to the main entrance. The walkway splits at the fountain and continues in either direction around the perimeter of the fountain until the walkways connect with the main sidewalk. Claimant fell as she proceeded on the north walkway around the fountain. Claimant was diagnosed with an ankle fracture requiring surgery.

¶ 8 Claimant testified that she was exposed to a greater risk than the general public because the public was not required to come to the building that day, and she had no other way to exit the building. She believed the east entrance would have been "snowy too." She explained the general public could have conducted business with the City online, over the telephone, or on a different day.

¶ 9 On August 21, 2015, the arbitrator issued her decision in the matter. She denied claimant's claim for benefits on the basis that she failed to establish that her injury "arose out of and in the course of" her employment. In particular, the arbitrator found claimant was injured as

the result of a personal risk to which she was not exposed to any greater degree than the general public. In so holding, the arbitrator noted claimant was not required by the employer to get coffee at Starbucks. Rather, she voluntarily chose to go and thereby "voluntarily exposed herself to an unnecessary danger entirely separate from the activities and responsibilities of her job." The arbitrator also noted that claimant "was performing an act of a personal nature solely for her own convenience[,] an act outside any risk connected with her employment, when she decided to go to Starbucks when it was clearly snowing heavily outside." The arbitrator further found the walkway was owned and maintained by respondent.

¶ 10 On October 14, 2016, the Commission affirmed and adopted the arbitrator's decision without further comment with Commissioner DeVriendt dissenting. On January 8, 2018, the circuit court of Sangamon County confirmed the Commission.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, claimant argues the Commission erred in finding she failed to prove the injury to her ankle arose out of her work for the employer. She maintains she was injured in an accident arising out of and in the course of her employment solely due to the fact her injury occurred on the employer's premises due to a dangerous or hazardous condition.

¶ 14 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the em-

ployment and the accidental injury." *Id.* A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his or her duties. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

¶ 15 However, a risk-analysis is unnecessary if the injury occurred on premises due to an unsafe or hazardous condition. Our supreme court has held that accidental injuries sustained on the employer's premises within a reasonable time before or after work arise " 'in the course of' " employment. *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 215 (1990) (quoting *Rogers v. Industrial Comm'n*, 83 Ill. 2d 221, 223 (1980)). Further, where the injury was due to the dangerous condition of the employer's premises, courts have consistently approved an award of compensation. *Id.* at 216. See also *Hiram Walker & Sons, Inc. v. Industrial Comm'n*, 41 Ill. 2d 429 (1968) (holding that claimant's fall in employer's ice-covered parking lot was compensable); *Carr v. Industrial Comm'n*, 26 Ill. 2d 347 (1962) (same); *De Hoyos v. Industrial Commission*, 26 Ill. 2d 110 (1962) (same); *Caterpillar Tractor Co v. Industrial Comm'n*, 129 Ill. 2d 52, 62 (1989) (suggesting that an injury is causally related to the employment if the injury occurs "as a direct result of a hazardous condition on the employer's premises"); *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1040 (2004) ("The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim."); *Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC, ¶ 40 (where the claimant slipped on ice in a parking lot furnished by her employer shortly after she arrived at work, the claimant was entitled to benefits under the Act "as a matter of law").

¶ 16 In other words, the fact that this walkway was also used by the general public is immaterial to the issue of compensability because claimant's injury was caused by a hazardous condition on the employer's premises. (It was undisputed during the hearing that the walkway

where claimant fell was owned and maintained by the employer.) As we noted in *Mores-Harvey*, 345 Ill. App. 3d at 1040:

> "[w]hether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees' use. If this is the case, then the lot constitutes part of the employer's premises. *The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim.*" (Emphasis added.)

See also *Chicago Tribune Co. v. Industrial Comm'n*, 136 Ill. App. 3d 260, 264 (1985) (affirming award of benefits for claimant who was injured while walking through a gallery owned by the employer which claimant was required to traverse in order to get to her work station even though the gallery was open to the general public, and stating that "[i]t is difficult to see how the [employer] can escape liability by exposing the public to the same risks encountered by its employees"). The same reasoning applies here. If the employer allows both its employees and members of the general public to use the west entrance and contemplates that its employees will enter and exit the building through this west entrance and use the accompanying walkway, a hazardous condition on the walkway that causes a claimant's injury is compensable, regardless of whether the employer restricts or dictates its employees' use of the entrance. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40. The hazardous condition of the employer's premises renders the risk of injury incidental to employment without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40.

¶ 17 The key factors that guide our decision in this case are as follows: (1) claimant's injury occurred on the employer's premises, and (2) the injury was due to or caused by a dangerous condition or defect on the employer's premises. No consideration is given as to whether claimant's risk was any greater than that of the general public.

¶ 18 As an alternative basis for recovery, the claimant maintains that her claim is compensable under *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill. 2d 331, 338 (1980), and other cases involving injuries suffered by employees during a lunch break or while performing other acts of "personal comfort." We disagree. Unlike having lunch, taking a bathroom break, or engaging in an encouraged recreational activity on the employer's premises, running a personal errand (in this case, going to a coffee shop) outside of the workplace is not a "personal comfort" that is incidental to one's employment. Thus, *Eagle Discount Supermarket* and the "personal comfort" cases cited by the claimant are inapposite.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we reverse the judgment of the circuit court of Sangamon County confirming the Commission's decision, reverse the Commission's decision, and remand the cause to the Commission for further proceedings.

¶ 21 Reversed; cause remanded.