2013 IL App (2d) 120694WC-U
No. 02-12-0694WC
Order filed May 31, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ADMIRAL MECHANICAL SERVICES, Plaintiff-Appellant and Cross-Appellee, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and JOSEPH F. LEAHY, Defendant-Appellee and Cross-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 11-MR-345 Honorable Thomas E. Mueller, 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:* Commission's decision that, as a traveling employee, claimant's injury was causally related to his employment was not contrary to the manifest weight of the evidence; traveling-employee doctrine did not need to be changed to conform with supreme court precedent; respondent's surety bond was valid despite failure to identify corporate officer who signed it on face of bond.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Joseph F. Leahy, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) alleging he sustained a work-related injury while in the employ of respondent, Admiral Mechanical Services. The injury at issue occurred while claimant was driving a company truck from his home and purportedly to a job located on a customer's premises. The Commission found that claimant was a traveling employee and that the injury was causally related to claimant's employment with respondent. The circuit court of Kane County confirmed the Commission's decision, and this appeal followed. Claimant has filed a cross-appeal as well, challenging the validity of respondent's surety bond. We now affirm and remand this cause for further proceedings, if any, in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 4 II. BACKGROUND

¶ 5 At the time of the arbitration hearing, claimant had been employed by respondent for approximately 15 years. Respondent provided claimant with a truck bearing the company's logo and telephone number. Respondent paid for expenses associated with the truck, and claimant did not use it for anything other than work. Claimant was not paid for travel time to jobs. Respondent has an office located in Hillside; claimant lives in Oswego. Claimant spends at least half his time out of the office meeting with customers. Claimant's job was to take care of "special projects." Claimant explained that his position involved dealing with "crazy" problems with heating and ventilation systems. He set his own schedule.

¶ 6 On June 17, 2010, claimant was to meet with John Gerren, a field foreman at the Aon Center in downtown Chicago. Claimant testified that he was to meet Gerren at 6 a.m.; Gerren stated the meeting was set for 8 a.m. Telephone records show that Gerren called claimant at 5:38 a.m. Claimant was already on his way to their meeting. The meeting concerned a job at the Aon Center.

Gerren stated that the job was in a bank, and they could not enter the premises until 8 a.m. He understood that if claimant arrived early, they would go for coffee. On the way to the meeting, claimant was involved in a head-on collision shortly before 6 a.m. He sustained multiple injuries, and he underwent several surgical procedures, including surgeries to his left hip and leg.

¶ 7 At issue in this appeal is whether claimant's injuries arose out of and occurred in the course of his employment with respondent. A central question to this issue is whether claimant was a traveling employee. See *Insulated Panel Co. v. Industrial Comm'n*, 318 Ill. App. 3d 100, 102-04 (2001). The arbitrator determined that claimant's injuries were causally related to his employment. She found that claimant was on his way from his home to meet Gerren. Gerren had requested a meeting with claimant in order to prepare a bid for a job at the Aon Center. The arbitrator recognized that accidents that occur while an employee is commuting to work are not usually compensable. She noted that there were exceptions to this general rule and that two of them potentially applied in this case: claimant was a traveling employee and he was operating an employer-provided truck at the time of the accident. She found that claimant spent most of his time traveling between locations outside of respondent's office in Hillside. Further, respondent provided claimant with a truck that bore a company logo in two places and had an extended cab to hold tools used by claimant. She noted the testimony of two of respondent's representatives that, though claimant was not "entitled" to the truck, the company provided it to him "out of respect for [claimant's] loyalty to the company." She concluded that "[i]mplicit in this rationale is an acknowledgment that providing the truck benefitted [r]espondent by rewarding a valued employee in the same way as paying for his vacation." She continued, "Such rewards are offered to employees a business wants to keep with the company." Additionally, respondent paid for claimant's gas and maintenance of the truck. As a traveling employee, the arbitrator found, claimant was in the course

of his employment at the time of the accident. She acknowledged that claimant may have been leaving early so that he and Gerren could have coffee. Nevertheless, as claimant had a business purpose in meeting with Gerren, he remained within the scope of his employment. The Commission affirmed and adopted the arbitrator's decision; the circuit court of Kane County confirmed; and this appeal followed.

¶ 8 III. ANALYSIS

¶ 9 It is true that an injury that occurs while an employee is commuting is not typically considered to arise out of or occur in the course of employment. *Complete Vending Services, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 1047, 1049 (1999). The traveling-employee doctrine constitutes an old and well-established exception to this general rule. See, *e.g.*, *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69 (1975); see also *U.S. Industries v. Industrial Comm'n*, 40 Ill. 2d 469 (1968); *Ace Pest Control, Inc. v. Industrial Comm'n*, 32 Ill. 2d 386 (1965). A "traveling employee" is an employee who must travel away from his or her employer's premises in order to perform his or her job. *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 278 (1999). Unless the employee's conduct is not reasonable and foreseeable, the employee remains within the scope of employment from the time he or she leaves home until the time he or she returns. *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545-46 (2010). The traveling employee retains the burden of proof regarding causation. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1984). That burden is met where the employee shows his or her conduct was reasonable and foreseeable. *Cox*, 406 Ill. App. 3d at 545-46. The determination of whether a claimant is a traveling employee will be disturbed only if it is against the manifest weight of the evidence, that is, if an opposite conclusion is clearly apparent. *Complete Vending Services, Inc.*, 305 Ill. App. 3d at 1049.

¶ 10 These rather straight-forward principles would seem to be enough to resolve this case. Claimant was in the process of driving to job-site other than his employers' premises when he was injured. We find it of no moment that claimant's trip originated from his home. See *Cox*, 406 Ill. App. 3d at 547 ("Although the claimant made this slight deviation from his route home in order to go to the bank, at the time of his accident, he had already made his withdrawal and was again on his way home. We believe, therefore, that he had re-entered the course of his employment at the time of his injury."). As such, claimant was clearly a traveling employee and, since nothing he was doing in driving to the job site appears unreasonable or not foreseeable, his injury was work-related. Respondent, nevertheless, makes a number of arguments as to why this result should not obtain.

¶ 11 Respondent first contends that we have extended the traveling-employee doctrine far beyond what the supreme court intended when the doctrine was first adopted. Respondent charges that the supreme court has never applied the doctrine where "an employee's job duties merely require a daily commute to and from a particular location" or "to an employee who returns home every night." We do not find respondent's contentions well founded. We initially note that we are not confronted with a situation where an employee is engaging in "a daily commute to and from a particular location." Respondent's place of business is not the Aon Center, and claimant was not engaged in a daily commute to that locations. Such hypothetical speculation does nothing to advance respondent's cause. *Cf. Outboard Marine Corp. v. James Chisholm & Sons, Inc.*, 133 Ill. App. 3d 238, 246 (1985) ("It is well settled that the 'actual controversy' requirement was intended to distinguish justiciable issues from abstract or hypothetical disputes, thereby preventing courts from passing judgment on mere abstract propositions of law, rendering advisory opinions, or giving legal advice as to future events."). The second contention is simply wrong. See *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 89, 92-93 (1983); *Urban v. Industrial Comm'n*, 34 Ill. 2d 159, 160 (1966); see also *J.E. Porter*

Co. v. Industrial Comm'n, 301 Ill. 76 (1922) (affirming award where traveling salesman returned from Streator to his home in Ottawa, ate lunch, proceed on to work, and was injured en route); cf. *Ace Pest Control, Inc.*, 32 Ill. 2d at 387, 388-89 (applying doctrine to employee who operated a truck in Peoria and outlying towns to make service calls). Respondent also asserts that the supreme court has stated that the traveling-employee rule was not meant to make an employer an insurer against all of an employee's injuries. *David Wexler & Co. v. Industrial Comm'n*, 52 Ill. 2d 506, 510 (1972). This assertion is not pertinent, as respondent was injured while he was traveling to a job site away from his employer's premises (Respondent speculates that claimant may have been traveling to the office or some other location because, respondent claims, he was not due at the Aon Center for over two hours. We do not find this speculation persuasive, and we cannot say that the Commission's finding otherwise is contrary to the manifest weight of the evidence.). Conversely, if claimant was simply commuting to this employer's place of business, no recovery could be had.

¶ 12 Respondent claims that cases applying the traveling-employee doctrine to employees who travel within the locality consisting of their homes and workplaces constitutes an unwarranted expansion of the doctrine. Whether this is true depends in large part upon the policies underlying the rule. As respondent correctly points out, the doctrine was originally applied to employees who traveled away from their homes and were exposed to risks such as driving on unfamiliar roads, staying at hotels, eating in restaurants, and simply from travel generally. *U.S. Industries, Production Machine Division v. Industrial Comm'n*, 40 Ill. 2d 469, 474-75 (1968); see also *Complete Vending Services, Inc.*, 305 Ill. App. 3d 1052-53 (1999) (Rakowski, J., specially concurring). Whether including employees who travel locally within the scope of the traveling-employee doctrine is warranted turns on whether local travel exposes these employees to risks in a similar manner as experienced by other traveling employees. Our research indicates that it does.

¶ 13 For example, *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 119 (2007), involved a claimant who, as a traveling employee was exposed to "street risks" to a greater degree than the general public when he was assaulted while he unloaded his truck in the rear of a grocery store. The facts are unclear as to where the claimant's trip originated; however, it was clear that the claimant was very familiar with the area in which he was assaulted. Thus, the rationale for the decision did not depend on the claimant's familiarity with the area, as it would with an employee who traveled away from home. Rather, *Potenzo* turned on the fact that by being forced to work in the streets, the claimant was exposed to greater risks than an ordinary member of the public. *Potenzo*, 378 Ill. App. 3d at 119 ("The undisputed evidence in this case establishes that the claimant was a traveling employee whose duties required him to travel the streets and unload a truck in areas accessible to the public. The risk of being assaulted, although one to which the general public is exposed, was a risk to which the claimant, by virtue to his employment, was exposed to a greater degree than the general public."). In *Potenzo*, the claimant would have been exposed to the same risk regardless of where he began his travel. Thus, the same rationale for extending the protection of the traveling-employee doctrine applies to claimant's like the one in *Potenzo* regardless of whether they are traveling locally or to a distant locale. May 9, 2013

¶ 14 Indeed, in *C.A. Dunham Co. v. Industrial Comm'n*, 16 Ill. 2d 102, 108 (1959) (quoting *City of Chicago v. Industrial Comm'n*, 389 Ill. 592, 601 (1945)), the supreme court stated that " '[w]here, therefore, the proof establishes that the work of the employee requires him to be on the street to perform the duties of his employment, the risks of the street become one of the risks of the employment, and an injury suffered on the street while performing his duty has a causal relation to his employment, authorizing an award.' " Thus, it has long been recognized that the dangers of the street present unique (at least qualitatively speaking) risks to employees who are exposed to them.

Though they might not be precisely the same risks that an employee traveling away from home encounters, the salient point is that he employee who travels locally is exposed to them as a consequence of the fact that he or she must travel. This symmetry provides a justification for applying the traveling-employee doctrine to such employees. In other words, we see no unwarranted expansion of traveling-employee doctrine.

¶ 15 Respondent contends that a broad application of the traveling-employee doctrine conflicts with section 11 of the Act (820 ILCS 305/11 (West 2010)). Section 11 provides, in pertinent part, as follows: "Accidental 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." 820 ILCS 305/11 (West 2010). Initially, we note that section 11 has no bearing on the facts of this case, as the Commission found that claimant was traveling to meet Gerren and prepare a bid for a job. Moreover, a substantially similar argument was rejected in *Bagcraft Corp. v. Industrial Comm'n*, 302 Ill. App. 3d 334, 338-39 (1998). We further note that the legislature has amended section 11 since *Bagcraft* was decided and did not alter any portion of it relevant to the issue presented in that case, thereby indicating its approval of this court's interpretation of the statute in *Bagcraft*. *Ready v. United/Goedecke Services, Inc.*, 232 Ill. 2d 369, 380 (2008). In sum, we do not find this argument persuasive.

¶ 16 We further disagree with respondent's overstated fear that the traveling-employee doctrine threatens to turn the Act into a strict-liability statute. The burden remains with the employee to prove causation (*Hoffman*, 109 Ill. 2d at 199), and the employee fulfills this burden by showing that the conduct he or she was engaged in at the time of the accident was reasonable and foreseeable. *Cox*, 406 Ill. App. 3d at 545-46. Respondent's protestations to the contrary notwithstanding, this

standard has provided employers with viable defenses in various situations. See, *e.g.*, *Jensen*, 305 Ill. App. 3d at 280-81 (holding that manner in which the claimant used an ATV was not reasonable or foreseeable); *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 575-76 (1980) (holding that an employee's "late-night excursion through an unfamiliar and potentially hazardous area" of a town was not reasonable or foreseeable."); *U.S. Industries, Production Machine Division*, 40 Ill. 2d at 475 ("Claimant's action in undertaking a midnight pleasure drive in unfamiliar, mountainous terrain was, in our judgment, a clearly unanticipated, unforeseeable and unreasonable activity not normally to be expected of a traveling employee."). Thus, we do not share respondent's concerns regarding the breadth of the traveling-employee doctrine. Moreover, respondent's claim that applying the doctrine in cases like this one turns all commuters into traveling employees is unfounded–claimant was not commuting to his employer's placed of business.

¶ 17 Respondent makes much of Gerren's testimony that he and claimant were not scheduled to meet until 8 a.m. From this, respondent asserts, the only reasonable inference is that claimant was engaged in some personal errand at the time, or perhaps driving to respondent's main office (which would constitute ordinary commuting). However, Gerren also testified that if claimant arrived early, they would go for coffee. Thus, even considering Gerren's testimony alone, it was inferable that claimant was on his way to the Aon Center. Parenthetically, we find it of no moment that claimant may have left early to allow himself time to have coffee with Gerren. When he was injured, he was traveling in furtherance of his employer's business. Even if going for coffee would have removed him from the scope of employment once he started engaging in that activity, it would not have done so while he was traveling. *Cf. County of Cook v. Industrial Comm'n*, 177 Ill. App. 3d 264, 273 (1988) ("Nevertheless, regardless of whether claimant and the driver had been on a 'frolic' at an earlier time, as was noted earlier, the evidence supported the determination that claimant had

returned to the course of his employment and that his injury had occurred after he had done so."). Finally, claimant testified that he was instructed to be at the Aon Center at 6 a.m. As such, the evidence respondent points to merely created a conflict in the record. Resolving such conflicts is primarily a matter for the Commission (*W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113129WC, ¶ 31), and its resolution is not contrary to the manifest weight of the evidence.

¶ 18 Respondent next argues that, using a traditional analysis, claimant's injuries neither arise out of or occurred in the course of his employment. See *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). However, we have determined that claimant was a traveling employee. Therefore, we need not address these arguments.

¶ 19 Finally, respondent contends that even if claimant is properly classified as a traveling employee, his injuries are not compensable because his conduct was not reasonable or foreseeable. Respondent's argument on this point hinges entirely upon the fact that claimant purportedly left his home "over two and a half hours earlier than he needed to arrive to his 8:00 meeting on time." Initially, we note the factual predicate for respondent's argument is lacking. As we explained above, there was a conflict in the evidence regarding when claimant was due at the Aon Center, and resolving that conflict in claimant's favor is not contrary to the manifest weight of the evidence. Moreover, we see nothing unreasonable or unforeseeable about the possibility that an employee might leave for a job early so that he or she could meet with another employee and go for coffee. See *District 141, International Association of Machinists & Aerospace Workers v. Industrial Comm'n*, 79 Ill. 2d 544, 549, 550 (1980) (affirming award where traveling employee spent evening in restaurant and lounge drinking alcohol and meeting with coworkers).

¶ 20 IV. CROSS-APPEAL

¶ 21 Claimant has also filed a cross-appeal, contending respondent's surety bond does not comply with section 19(f)(1) of the Act (820 ILCS 305/19(f)(1) (West 2012)). Specifically, claimant complains that the authority of the individual who signed the bond was not present on the face of the bond. Chris Raffen signed the bond. Raffen is, in fact, one of respondent's officers. Affidavits later showed that Raffen had authority to sign for the president. Additionally, claimant asserts that such a deficiency cannot be remedied after the period in which to seek review has run. These arguments were considered and rejected in *First Chicago v. Industrial Comm'n*, 294 Ill. App. 3d 685, 688-89 (1998). We find them no more persuasive here.

¶ 22 V. CONCLUSION

¶ 23 Having rejected all of respondent's arguments, we affirm the decision of the circuit court of Kane County confirming the decision of the Commission. This cause is remanded for further proceedings, if any, pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 24 Affirmed and remanded.