ILLINOIS OFFICIAL REPORTS

Appellate Court

***Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC**

Appellate Court Caption	MARY SUTER, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Manpower, Appellee).
District & No.	Fourth District Docket No. 4-13-0049WC
Filed	November 14, 2013
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	The appellate court reversed the trial court's confirmation of the Workers' Compensation Commission's decision finding that claimant failed to prove that the injuries suffered when she fell on the ice in the parking lot near the building where she worked arose out of and in the course of her employment, since the evidence showing that claimant worked for the State of Illinois through a temporary employment agency, worked in a building the State leased with a provision requiring the landlord to provide 410 parking spaces for state employees, and fell after parking her car in a space assigned to her in one of the lots by an agent of the landlord based on her status as a state employee established that she was injured "in the course" of her employment, and based on the undisputed facts, her injuries "arose out of" a risk associated with her employment.
Decision Under Review	Appeal from the Circuit Court of Sangamon County, No. 12-MR-592; the Hon. John Schmidt, Judge, presiding.
Judgment	Reversed; cause remanded.

Counsel on Appeal	Andrew Ricci (argued), of John V. Boshardy & Associates, P.C., of Springfield, for appellant. Matthew A. Brewer (argued), of Knell & Kelly, L.L.C., of Peoria, for appellee.
Panel	JUSTICE STEWART delivered the judgment of the court, with opinion. Presiding Justice Holdridge and Justices Hoffman, Hudson, and Harris concurred in the judgment and opinion.

OPINION

¶ 1 The claimant, Mary Suter, slipped and fell on ice on a parking lot as she exited her vehicle to go to work and sustained injuries to her left upper extremity. She filed a claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)). The Workers' Compensation Commission (Commission) found that she failed to prove that her accident arose out of and in the course of her employment. The circuit court confirmed the Commission's decision, and the claimant appeals the circuit court's judgment. We reverse and remand for further proceedings on the claimant's claim.

¶ 2 I. BACKGROUND

¶ 3 Manpower is a temporary employment agency, and the claimant was employed by Manpower as a temporary worker. Manpower loaned the claimant to work at the Illinois Department of Insurance as a temporary employee. During the time she was employed by Manpower, the claimant worked exclusively for the Department of Insurance at a building called the Bicentennial Building, which is located on Washington Street in Springfield, Illinois. The State of Illinois leased the building for offices for several state agencies, including the Department of Insurance. The lease required the landlord to provide parking spaces for 410 vehicles for State of Illinois employees. In addition, the lease required the landlord to provide services such as snow and ice removal from the sidewalks and parking areas.

¶ 4 Manpower did not provide the claimant with any instructions concerning parking. When the claimant started working at the Department of Insurance, she initially parked on the street. On her first day at work, she asked one of her supervisors, Tommy Collier, about available parking. Collier told her that he did not know anything about the parking. During cross-examination, the claimant testified that she was told that she was on her own as far as parking was concerned. Collier, however, also told the claimant to speak with the building manager, Douglas Sim, and he would tell her if there was a space available. Sim was not an employee of the State of Illinois but worked for a managing agent that, in turn, worked for

a limited partnership that owned the building.

¶ 5 At the arbitration hearing, Collier testified that "when a temporary person comes in and asks for parking I tell them to see the building manager or they can find their own parking and pay the parking." He did not know how regular, full-time state employees were assigned their parking spaces or where they parked. Collier testified that when he first started working for the Department of Insurance, he did not immediately have a parking space, but one was later assigned to him. He did not remember who assigned him the parking space.

¶ 6 Sim testified that he had managed the building for 10 years. According to Sim, the landlord made 10 parking lots available for state employee parking, and there were approximately 723 parking spots on the lots. The parking spaces were assigned to state employees on a first-come, first-served basis.

¶ 7 Sim assigned the claimant a specific parking space within one of the lots available for state employee parking. At that time, the claimant had been working for the Department of Insurance for about one week. The parking lot was not available to the general public. Sim testified that he assigned parking spaces to Manpower employees because he knew that they did not make a lot of money. He testified that he did this on his own and that no one from the State of Illinois told him to do so. The spots he assigned to Manpower workers were not available to the general public.

¶ 8 The accident at issue occurred on February 8, 2010. The claimant had arrived for work and parked her vehicle in her assigned parking space. She retrieved her backpack, which contained snacks, and coffee and was closing her car door when she slipped on ice and struck the pavement with her back and left arm. She had severe pain in her left arm.

¶ 9 The claimant went inside the office building and told her supervisor, Kelly Krueger, about her accident and that she had hurt her arm. Krueger contacted Manpower, and someone at Manpower told Krueger to take the claimant to the emergency room. The emergency room staff diagnosed the claimant as having highly comminuted intra-articular left distal radius and ulna fractures. The emergency room staff treated the claimant and referred her to Dr. Thomas Hansen for an open reduction and internal fixation of the fractures. Dr. Hansen performed surgery on the claimant's left arm on February 17, 2010, and the claimant was released to light-duty work on February 22, 2010. She was released from care without restrictions on May 24, 2010.

¶ 10 When the claimant filed her application for adjustment of claim, she named Manpower as a loaning employer and the State of Illinois as a borrowing employer. The arbitrator denied the claimant benefits under the Act, finding that she did not prove that she sustained accidental injuries that arose out of and in the course of her employment. The arbitrator based her decision on a finding that neither Manpower nor the State of Illinois provided the claimant with a parking space. The arbitrator stated that Sim was not an agent or employee of either employer. Therefore, the arbitrator concluded that Sim's actions could not be attributed to either employer; instead, Sim provided the claimant with a parking space on his own "as a voluntary act of human kindness."

¶ 11 The claimant appealed the arbitrator's decision to the Commission, and the Commission affirmed and adopted the arbitrator's decision. The claimant appealed the Commission's

decision to the circuit court. In the circuit court proceedings, the claimant agreed to a dismissal of the State of Illinois as a party because the circuit court did not have jurisdiction over the State. The circuit court subsequently entered a judgment that confirmed the Commission's decision. The claimant now appeals the circuit court's judgment that confirmed the Commission's decision.

¶ 12 II. ANALYSIS

¶ 13 At the outset, we note that the State of Illinois is not a party to this appeal, only Manpower, and that the claimant alleged that she was injured while working for the State as a temporary employee. In filing her workers' compensation claim, the claimant named Manpower as a loaning employer and the State as a borrowing employer. When Manpower loaned the claimant to the State, the claimant became an employee of the State. *Raymond Concrete Pile Co. v. Industrial Comm'n*, 37 Ill. 2d 512, 516, 229 N.E.2d 673, 675 (1967) ("In identifying the employer of a loaned employee the dominant circumstance has been the right to control the manner in which the work is to be done."). Although the State is not a party to this appeal, we note that when an employer loans an employee to another employer and the loaned employee sustains a compensable injury and the borrowing employer does not pay the benefits due, the loaning employer is liable to pay all benefits due. 820 ILCS 305/1(a)(4) (West 2010).

¶ 14 Turning to the merits of the claimant's appeal, the claimant argues that the Commission incorrectly determined that she failed to prove that she sustained accidental injuries arising out of and in the course of her employment. A workers' compensation claimant has the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of her employment. 820 ILCS 305/2 (West 2010). Both elements must be present in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 605 (1989).

¶ 15 "[W]hether an injury arose out of and in the course of one's employment is generally a question of fact." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). However, when the facts are undisputed and susceptible to but a single inference, the question is one of law subject to *de novo* review. See *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 279, 947 N.E.2d 856, 860 (2011) ("It is only in those cases where the undisputed facts are susceptible to but a single inference that the inquiry becomes one of law and subject to *de novo* review."). The facts of this case are not disputed and, therefore, "a question of law is presented." *Maxim's of Illinois, Inc. v. Industrial Comm'n*, 35 Ill. 2d 601, 603, 221 N.E.2d 281, 282 (1966).

¶ 16 The undisputed evidence in the present case established that, as a matter of law, the claimant sustained an injury that "arose out of" and "in the course of" her employment.

¶ 17 A. "In the Course of" the Claimant's Employment

¶ 18 "The phrase 'in the course of' refers to the time, place, and circumstances under which the accident occurred." *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005,

1008 (1987). "Injuries sustained on an 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, are generally deemed to have been received in the course of the employment." *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶ 21, 956 N.E.2d 543. "That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003).

¶ 19 "When an employee slips and falls, or is otherwise injured, at a point off of the employer's premises while traveling to or from work, her injuries are ordinarily not compensable under the Act." *Vill v. Industrial Comm'n*, 351 Ill. App. 3d 798, 803, 814 N.E.2d 917, 921 (2004). Under such circumstances, the accident occurs outside "the course of" the employment. *Northwestern University v. Industrial Comm'n*, 409 Ill. 216, 221, 99 N.E.2d 18, 21 (1951).

¶ 20 However, Illinois courts have recognized two exceptions to this "general premises rule." *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1038, 804 N.E.2d 1086, 1090 (2004). First, "recovery has been permitted for off-premises injuries when 'the employee's presence at the place where the accident occurred was required in the performance of his duties and the employee is exposed to a risk common to the general public to a greater degree than other persons.' " *Id.* (quoting *Illinois Bell*, 131 Ill. 2d at 484, 546 N.E.2d at 605).

¶ 21 Second, there is a "parking lot exception" where courts have allowed recovery when the employee is injured in a parking lot provided by and under the control of the employer. *Vill*, 351 Ill. App. 3d at 803, 814 N.E.2d at 922. This exception applies in circumstances where the employee's injury is caused by some hazardous condition in the parking lot. *Id.*

¶ 22 In the present case, in evaluating the "in the course of" element of the claimant's claim, we need not analyze whether the claimant's claim falls under the first exception to the "general premises rule" because the uncontroverted evidence establishes that the claimant's claim falls within the "parking lot exception" to the rule.

¶ 23 The rationale for awarding workers' compensation benefits when an employee is injured because of the conditions of an employer-provided parking lot is that the "employer-provided parking lot is considered part of the employer's premises." *Mores-Harvey*, 345 Ill. App. 3d at 1038, 804 N.E.2d at 1090. In applying the parking lot exception, Illinois courts have held that so long as the employer has provided a parking lot for use by its employees, the fact that the employer does not own the lot is immaterial. *C. Iber & Sons, Inc. v. Industrial Comm'n*, 81 Ill. 2d 130, 135, 407 N.E.2d 39, 42 (1980). In addition, once the parking lot is considered part of the employer's premises, any injury on the parking lot is compensable if it would be compensable on the employer's main premises. *Mores-Harvey*, 345 Ill. App. 3d at 1038, 804 N.E.2d at 1090-91.

¶ 24 *De Hoyos v. Industrial Comm'n*, 26 Ill. 2d 110, 185 N.E.2d 885 (1962), provides an example of the application of the parking lot exception to uncontested facts to establish the "in the course of" element of a workers' compensation claim as a matter of law. In *De Hoyos*, an employee was injured when he slipped and fell on snow and ice in a parking

lot as he was walking from his vehicle to a plant where he worked. The Commission held that the employee failed to prove that his accident arose out of and in the course of his employment. On appeal, the employer argued that the Commission's decision was a factual decision that should not be disturbed because the employee did not prove that he was on a company parking lot or that his fall was caused by the circumstances of his work. The court disagreed.

¶ 25 The *De Hoyos* court noted that, although the employee did not know who owned the parking lot, he testified that the lot was provided by the employer and was adjacent to the employer's plant. *Id.* at 113, 185 N.E.2d at 887. The court, therefore, concluded that whether the employer owned the parking lot was immaterial and that the question presented was not a factual issue. Instead, the court concluded that "when an employer provides a parking lot for employees and an employee falls on the parking lot, this fact being uncontroverted on the record, the employee is entitled to recover as a matter of law." *Id.* at 114, 185 N.E.2d at 887. In addition, the court also disagreed with the employer's assertion that the fall was not caused by the circumstances of the employee's work. The court held that "an employee who falls on a parking lot provided by his employer while proceeding to work *** is subjected to hazards to which the general public is not exposed." *Id.*

¶ 26 In the present case, the evidence established that the State's lease with the Bicentennial Building's owner required the owner to provide parking for 410 vehicles, 24 hours a day, 7 days a week. Therefore, the State, through its negotiated lease with the building's owner, provided parking spaces specifically for state employees. Sim testified that the parking spaces were provided in 10 different parking lots, including the parking lot where the claimant had received an assigned parking space. The uncontroverted evidence further established that the claimant was an employee of the State, as a loaned employee from Manpower, when she was assigned the parking space and when she slipped in the parking lot furnished for state employee parking. *Raymond Concrete Pile Co.*, 37 Ill. 2d at 516, 229 N.E.2d at 675 ("In identifying the employer of a loaned employee the dominant circumstance has been the right to control the manner in which the work is to be done."). The uncontroverted evidence, therefore, established that a state employee slipped and fell as a result of the conditions of a parking lot provided by the State specifically for state employees.

¶ 27 We believe that the holding of *De Hoyos* applies squarely to the facts of this case concerning whether the claimant's accident occurred "in the course of" her employment. It is uncontroverted that the claimant was a borrowed employee working for the State of Illinois and that the parking spaces in the lot where she fell were furnished to employees for their use through the State's lease agreement with the building's landlord. These facts, "uncontroverted on the record," establish that the "employer provide[d] a parking lot for employees and an employee [fell] on [this] parking lot"; therefore, "the employee is entitled to recover as a matter of law." *De Hoyos*, 26 Ill. 2d at 114, 185 N.E.2d at 887.

¶ 28 Manpower argues that the claimant's parking space was not employer-provided because no one from the State or Manpower assigned her the parking spot. Instead, the landlord's agent, Sim, assigned her the parking space. Although Sim testified that no one from the State directed him to assign the claimant a parking spot, the evidence established that the claimant's supervisor directed the claimant to Sim for the purpose of a parking lot

assignment, if one was available. He directed her to make this inquiry, not because she was a member of the general public in need of a parking space, but because she was a temporary state worker in need of a parking space. Collier directed all temporary state workers to Sim for a parking space assignment.

¶ 29 We find it significant that Collier did not tell the claimant that she could not have one of the state-provided parking spaces, but instead stated that he was unsure of the availability of parking spaces and directed her to find out if Sim had one available for her. Collier could not guarantee that the claimant could have an assigned parking spot, but the uncontroverted fact remains that the claimant received an assigned parking spot based on her status as a temporary employee of the State and consistent with her supervisor's, Collier's, direction. Accordingly, the evidence established that the claimant's ability to use the nonpublic parking lot is derived from her status as an employee of the State.

¶ 30 Under these uncontroverted facts, the claimant was authorized by her employer to park on a nonpublic parking lot that was made available to employees for parking by the employer through a lease agreement with the employer's landlord. As noted in *Mores-Harvey*, the relevant inquiry is "whether the employer maintains and provides the lot for its employees' use." *Mores-Harvey*, 345 Ill. App. 3d at 1040, 804 N.E.2d at 1092. "If this is the case, then the lot constitutes part of the employer's premises," and "[t]he presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim." *Id.*

¶ 31 In the present case, the claimant's use of the nonpublic parking lot was a customary and permitted activity as a state employee. Even as a temporary employee, her parking was customary and permitted because Collier testified that he sent all temporary employees to Sim for parking assignments, and Sim testified that he assigned parking spots to other Manpower employees working for the State. The State, through Collier, encouraged and permitted the claimant's use of the parking lot that was made available to state employees through the terms of the lease.

¶ 32 We also find *County of Cook v. Industrial Comm'n*, 165 Ill. App. 3d 1005, 520 N.E.2d 896 (1988), to be persuasive. In that case, the employee of a county, a judge's secretary, sought workers' compensation benefits after an assailant stabbed and robbed her during lunchtime in a parking lot adjacent to the building where the county leased office space from a municipality. *Id.* at 1006-07, 520 N.E.2d at 897. Approximately 25 to 30 county employees parked in the parking lot. The judge assigned the employee a reserved parking space in the lot, and use of the lot was generally restricted to city and county employees, but sometimes members of the public also parked in the lot. *Id.* at 1008, 520 N.E.2d at 898.

¶ 33 In finding that the employee's injuries were sustained "in the course of" her employment, the court noted that the county's lease with the city made no reference to parking spaces. Nonetheless, the parking lot was adjacent to a city building where the county leased office space for judges and their staff, and the presiding judge assigned the employee a permanent parking space. The city maintained the parking lot, four spaces were assigned for certain county employees, and city employees could use the lot, but their spaces were not assigned. *Id.*

¶ 34 The county argued that the employee was not injured on its premises because she did not establish that it owned or maintained the parking lot. *Id.* at 1008-09, 520 N.E.2d at 899. The court, however, noted that "[t]he fact that the employer leases space and the area where the injury occurs is used by other tenants or the public does not necessarily mean it is not the employer's 'premises.' " *Id.* at 1009, 520 N.E.2d at 899. The court concluded that the Commission was entitled to find that the injury occurred on the " 'employer's premises' " for purposes of determining whether the injury was sustained in the course of employment.

¶ 35 In support of the Commission's decision with respect to the "in the course of" element, Manpower cites *Maxim's*, 35 Ill. 2d 601, 221 N.E.2d 281. That case is distinguishable. In *Maxim's*, the claimant slipped in a parking lot "that the employees of the employer do not customarily use." *Id.* at 603, 221 N.E.2d at 282. The parking lot was for customers of the employer's landlord, and the lease between the employer and the landlord did "not refer to any parking lot facilities." *Id.*

¶ 36 Manpower also cites *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812, 786 N.E.2d 627 (2003). Again, that case is distinguishable from the facts of the present case. In *Joiner*, the employee was injured in a slip and fall accident in a parking lot that was a privately owned, public parking facility that was available for use by the general public on a monthly or daily fee basis. It was not owned or leased by the employer, and the employer had no agreement with the lot's owner regarding the fees charged to employees who parked in the lot. The employer only agreed to reimburse employees for parking at a specified monthly rate upon being presented with the employees' parking receipts. *Id.* at 814, 786 N.E.2d at 629. The *Joiner* court held that the parking lot exception to the general premises rule did not apply under these facts. *Id.* at 818, 786 N.E.2d at 631-32.

¶ 37 For the reasons noted above, the facts of the present case are different. *Maxim's* and *Joiner*, therefore, are not persuasive. *Maxim's* is relevant only to the extent that it establishes that the undisputed facts of this case present us with a question of law. *Maxim's*, 35 Ill. 2d at 603, 221 N.E.2d at 282.

¶ 38 B. "Arising Out of" the Claimant's Employment

¶ 39 "Arising out of" the employment refers to the origin or cause of a claimant's injury. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151, 1156 (2011). For an injury caused by a fall to arise out of the employment, a claimant must present evidence which supports a reasonable inference that the fall stemmed from a risk associated with her employment. *Builders Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 1010, 791 N.E.2d 1308, 1311 (2003).

¶ 40 The uncontroverted evidence established that the claimant slipped on ice in the employer-furnished parking lot as she closed her car door shortly after arriving at work. Under the supreme court's holding in *De Hoyos*, these uncontroverted facts establish the claimant's right to benefits under the Act as a matter of law. *De Hoyos*, 26 Ill. 2d at 114, 185 N.E.2d at 887.

¶ 41 In *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 216, 437 N.E.2d 609, 611 (1982), the court held, "[W]here the claimant's injury was sustained as a result of

the condition of the employer's premises, this court has consistently approved an award of compensation." In support of this statement, the court cited "cases in which claimant fell in employer's ice-covered parking lot." *Id.* (citing *De Hoyos*, 26 Ill. 2d at 112, 185 N.E.2d at 886, and *Hiram Walker & Sons, Inc. v. Industrial Comm'n*, 41 Ill. 2d 429, 431, 244 N.E.2d 179, 181(1968) (injury arose out of and in the course of employment where the claimant injured his hand after he slipped in a snowy and icy company parking lot after he parked his car)). See also *Mores-Harvey*, 345 Ill. App. 3d at 1040, 804 N.E.2d at 1091 ("here, as in the earlier cases, a hazardous condition was present on the surface of employer's parking lot–snow and ice–that caused the claimant's injuries"); *Chmelik v. Vana*, 31 Ill. 2d 272, 279, 201 N.E.2d 434, 439 (1964) ("[A]n injury accidentally received on the premises of the employer by an employee going to or from his actual employment by a customary or permitted route, within a reasonable time before or after work, is received in the course of and arises out of the employment.").

¶ 42 The undisputed facts of the present case establish that the claimant's accidental injuries were caused by an accident that arose out of her employment as a matter of law. *Oscar Mayer Foods Corp. v. Industrial Comm'n*, 146 Ill. App. 315, 320, 496 N.E.2d 515, 518 (1986) ("It may rather be that the *** Commission's holding [that the employee's injuries arose out of her employment] was correct as a matter of law based on the almost wholly undisputed facts of this case.").

¶ 43 III. CONCLUSION

¶ 44 We reverse the circuit court's judgment that confirmed the Commission's decision, set aside the Commission's decision, and remand this case to the Commission for further proceedings consistent with this decision.

¶ 45 Reversed; cause remanded.