# ILLINOIS OFFICIAL REPORTS

**Appellate Court**


***Autumn Accolade v. Illinois Workers' Compensation Comm'n*,**
**2013 IL App (3d) 120588WC**

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| Appellate Court Caption | AUTUMN ACCOLADE, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Joan Shannon, Appellee). |
| District & No. | Third District<br>Docket No. 3-12-0588WC |
| Filed | May 30, 2013 |
| Held<br>(*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 trial court's judgment confirming the Workers' Compensation Commission's award of medical expenses, temporary total disability and permanent partial disability benefits to claimant for the neck and back injury she suffered while helping a patient at the assisted-care facility where she worked was affirmed, notwithstanding her employer's contention that her injury was the result of a mere act of "reaching" that was not peculiar to her employment, since the medical records presented at the arbitration hearing supported claimant's contention that the injury arose out of and in the course of her duty to assist patient take a shower. |
| Decision Under Review | Appeal from the Circuit Court of Tazewell County, No. 11-MR-111; the Hon. Paul Gilfillan, Judge, presiding. |
| Judgment | Affirmed. |

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| Counsel on Appeal | Brad A. Elward, Bradford B. Ingram, and Craig S. Young, all of Heyl, Royster, Voelker & Allen, of Peoria, for appellant.<br><br>Tracy L. Jones, of Law Office of Jim Black & Associates, of Rockford, for appellee. |
| Panel | JUSTICE HUDSON delivered the judgment of the court, with opinion.<br>Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment and opinion. |

## OPINION

¶ 1 Claimant, Joan Shannon, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) alleging that she sustained a compensable injury while working as a caregiver for respondent, Autumn Accolade. The arbitrator found that claimant's injury arose out of and in the course of her employment with respondent and that claimant's current condition of ill-being is causally related to the industrial accident. As such, the arbitrator awarded claimant reasonable and necessary medical expenses (see 820 ILCS 305/8(a) (West 2008)), temporary total disability (TTD) benefits (see 820 ILCS 305/8(b) (West 2008)), and permanent partial disability (PPD) benefits (see 820 ILCS 305/8(d)(2) (West 2008)). The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. The circuit court of Tazewell County confirmed the decision of the Commission. On appeal, respondent argues that the evidence fails to support the Commission's finding that claimant sustained an accident arising out of her employment. We affirm.

¶ 2 I. BACKGROUND

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing held on August 25, 2010. Respondent operates an assisted-care facility. Claimant was hired by respondent as a caregiver in October 2008. Claimant's duties involved helping residents in their activities of daily living, such as bathing, serving meals, cleaning, and laundry.

¶ 4 With respect to the injury at issue, claimant related that on March 15, 2009, she was assisting a female resident with a shower when she felt something in her neck "pop" as she reached to remove a soap dish. Claimant testified that the soap dish was on a ledge underneath the showerhead. As a result, when the shower was on, water would run onto the soap dish causing suds to form. Claimant stated that she felt it necessary to remove the soap dish because she was concerned for the resident's safety, specifically that the resident might slip on the soap suds. Claimant testified that while she had her right hand on the resident, she

turned toward her left and extended her left arm to reach for the soap dish. Claimant testified that as she reached for the soap dish, she felt her neck "pop" and experienced a "shooting pain" down her right arm and into her armpit. Claimant testified that because of the pain in her right arm and neck, she was only able to "coach" the resident for the remaining part of her shower. Claimant testified that she then went to the kitchen and told the cook that she was assisting a resident in the shower when she felt a "pop" in her neck. Claimant obtained an ice pack and held ice on her neck. Thereafter, claimant continued to work, performing various chores, although she was able to do activities which required the use of only her left arm.

¶ 5 The following day, claimant was seen by her primary-care physician, Dr. William Baumgartner. At that time, claimant reported the onset of shooting pain down her shoulder after she "reached" at work the previous day. X rays were taken, an MRI was recommended, and pain medication was prescribed. The X rays were interpreted by Dr. Raymond Lee, who noted a history of claimant "lifting [a] patient under shower yesterday" when she experienced "a popping sensation in her spine with pain." The X rays showed marked degenerative disc disease at C5-C6. The MRI revealed a large central disc herniation at C6-C7 with moderate flattening along the ventral cord and bilateral foraminal narrowing.

¶ 6 On March 19, 2009, claimant was examined by Dr. Peter Rossi. Dr. Rossi noted that claimant has "a long history of back and neck pain" and that over the past 48 hours, she had been experiencing severe neck pain and worsening right upper-extremity radicular symptoms. After examining claimant and reviewing the MRI, Dr. Rossi diagnosed a C6-C7 disc herniation with severe radicular symptoms. Dr. Rossi administered intramuscular injections of Kenalog and Toradol, which decreased claimant's pain somewhat. In addition, Dr. Rossi consulted Dr. Dzung Dinh, a neurosurgeon, who referred claimant to OSF St. Francis Medical Center (St. Francis) for possible surgical intervention.

¶ 7 Claimant was admitted to St. Francis on March 19, 2009, and treated with Dr. Dinh and Dr. William Lee. Dr. William Lee's records reflect a history of claimant "bending over at work when she felt a pop and then had neck pain radiating down into her right arm." Dr. William Lee ordered a repeat MRI, which was performed the following day. That MRI revealed a right C6-C7 herniated nucleus pulposus as well as disc degeneration and uncovertebral spurring on the left at C5-C6. Dr. Dinh gave claimant the option of undergoing surgery or treating the injury conservatively. Claimant opted for conservative treatment. Claimant was discharged from the hospital on March 20, 2009, with a prescription for pain medication, instructions to see a physical therapist, and a referral to Dr. Rossi for an epidural injection on the right at C6-C7. The discharge summary reflects that claimant's injury occurred as she was "helping a resident and she felt a pop in the back of her neck and had pain radiating into the right upper extremity, right pectoral and scapular region, as well as axilla region on the right side."

¶ 8 Claimant reported no improvement with conservative treatment and eventually decided to undergo surgery. The operation, which consisted of an anterior cervical discectomy and fusion at C5-C6 and C6-C7 with cornerstone cortical graft and vision plating from C5-C7, was performed by Dr. Dinh on April 2, 2009. Claimant was discharged from the hospital on April 3, 2009. The discharge summary states that claimant's injury occurred when she "bent

over at work and felt a pop in the back of her neck, radiating down her right arm." Claimant continued to treat with Dr. Dinh following surgery and was seen in follow-up on May 12, 2009. At that time, claimant's incision was healing well and X rays showed the fusion and plate were in good position. Dr. Dinh referred claimant to physical therapy.

¶ 9 Claimant presented for an independent medical examination (IME) by Dr. Steven Pineda on November 2, 2009, at the request of her attorney. Dr. Pineda's notes contain the following history of injury:

> "There was an individual who was in a shower, and [claimant] was assisting that individual and there was some soap and water and there was some slippery ground, and in the process of assisting this individual into the shower, as far as I understand it, she slipped or twisted and as she did so, she felt a pop in her neck and had pain in her right arm. She did not fall, but it is essentially an event where she was holding the individual and in the process of holding and/or balancing this individual, [claimant] slipped and twisted in the shower and then the pain ensued."

Dr. Pineda opined that, although there is evidence of degeneration on claimant's cervical MRI, which likely existed prior to the injury at issue, claimant "at the very least" aggravated her cervical disc disease to the point of requiring treatment. He added that claimant had nearly reached maximum medical improvement (MMI). Dr. Pineda opined that it was likely claimant would need lifting restrictions starting in the 35- to 40-pound range, but that she could return to work within those restrictions as of the time of his evaluation.

¶ 10 On March 16, 2010, claimant was seen for an IME at the request of respondent's workers' compensation carrier by Dr. M. Marc Soriano. Dr. Soriano's report contains the following history of injury:

> "[Claimant] reports that she was injured on or about March 15, 2009. At that time, she was working as a caregiver and assisting a female resident. The resident did not require any lifting assistance and she was guiding the resident into the shower. The resident stepped into the shower as [claimant] was holding her under the right armpit. She was then guiding her down when she reached to move some soap. As she started to sit her down, she guided the resident to a sitting position. As she was bent forward, she then reached with her left arm, turned her head to grab the bar of soap and felt a pop in her neck. She became stuck in that position. She eventually stepped back and had shooting pain down the right axilla."

Dr. Soriano opined that claimant's neck condition was causally related to the injury of March 15, 2009. Specifically, he opined that the injury of March 15, 2009, was the proximal cause of the herniated disc at C6-C7 to the right, that this injury aggravated and acutely worsened the preexisting degenerative disc disease at C6-C7, and that the injury led to the need for the surgery. Dr. Soriano further opined that the surgery claimant underwent at the C6-C7 level was reasonable and necessary and that surgery at the C5-C6 level, while reasonable, "should not be considered part of the work-related injury." Finally, Dr. Soriano opined that claimant had reached MMI within six months following surgery and that she was capable of working without restrictions at that time.

¶ 11 Respondent offered into evidence an incident/accident report. The upper half of the report

was filled out by respondent on March 15, 2009, and contains the following history of the injury:

> "When giving Alice a shower: something popped in my shoulder. It sent shooting pains down my [right] arm, took ibuprofen; as the day went on the pain increased in my shoulder and armpit. Shooting pains throughout my shift. Will apply heat at home and take ibuprofen as needed. Did apply ice on break–it helped!"

The lower half of the report was completed by claimant's manager, Debra Penn, on March 16, 2009. Penn indicated that when she spoke with claimant, claimant reported "that she just turned her head and something popped. The resident that was getting the shower is very mobil [*sic*] and no lifting at all [was] necessary." Penn also noted that claimant followed up with a physician and was told that "this could have happened anywhere anytime and nothing in particular caused it to happen."

¶ 12 Respondent also offered into evidence a diary note authored by claimant of the activities and incident that occurred on March 15, 2009. The diary states, "Alice showered–(during shower something popped in my back–I told Anita and made incident report. The pain increased through the day. Will take ibuprofen and try heating pad at home.)" In addition, respondent offered into evidence Form 45, titled "Employer's First Report of Injury or Illness." Form 45 was prepared and signed by Penn on March 27, 2009. The nature of the injury as described by Penn on Form 45 was that "[claimant] said she turned her head and something popped" in her neck as she was "[a]ssisting a resident with a shower."

¶ 13 The arbitrator concluded that claimant sustained an injury that arose out of and in the course of her employment with respondent on March 15, 2009. The arbitrator cited three reasons for its finding. First, the arbitrator found that "the placement of the ledge which holds the soap dish at the employer's facility, created an increased risk of injury because the soap dish was directly below the shower head, which is more likely to result in soap suds which would make it slippery for residents in a shower. Given that the [claimant's] job duties included assisting residents while showering to prevent slips and falls or injuries, the placement of the soap dish directly below the shower head placed [claimant] at an increased risk of injury than that to which the general public is exposed." Second, the arbitrator found that "assisting a resident by holding the resident with one hand to prevent a fall while showering is a necessary part of the [claimant's] job and is an act that the [claimant] might reasonably be expected to perform in addition to her assigned duties." Third, the arbitrator found that "because [claimant's] job duties of insuring the safety of the resident required her to hold on to the resident to prevent her from falling while at the same time, turning to the left, bending forward and reaching awkwardly to retrieve the soap dish placed her at an increased risk of injury than that to which the general public is exposed." The arbitrator further concluded that claimant's current condition of ill-being is causally related to the March 15, 2009, injury. The arbitrator awarded claimant $62,498.73 as reasonable and necessary medical expenses (see 820 ILCS 305/8(a) (West 2008)), 33 weeks of TTD benefits (see 820 ILCS 305/8(b) (West 2008)), and 150 weeks of PPD benefits, representing 30% of the person as a whole (see 820 ILCS 305/8(d)(2) (West 2008)). The Commission affirmed and adopted the decision of the arbitrator. The circuit court of Tazewell County confirmed the decision of the Commission. This timely appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent argues that the Commission's finding that claimant sustained a compensable accident is against the manifest weight of the evidence. In particular, respondent contends that claimant failed to prove an accident "arising out of" her employment because the act resulting in her injury–reaching for a soap dish–was not a risk peculiar to her employment with respondent, but rather was a risk peculiar to claimant and one to which members of the public are equally exposed.

¶ 16 The purpose of the Act is to protect an employee from risks and hazards which are peculiar to the nature of the work he or she is employed to do. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). For an injury to be compensable, however, more is required than the fact of an occurrence at an employee's place of work. *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 43 (1980). An employee's injury is compensable under the Act only if it "aris[es] out of" and "in the course of" one's employment. 820 ILCS 305/2 (West 2008); *Orsini*, 117 Ill. 2d at 44. It is the burden of the employee to establish by a preponderance of the evidence that both elements were present at the time of the accident's occurrence. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989); *Rodin v. Industrial Comm'n*, 316 Ill. App. 3d 1224, 1226 (2000). The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). In this case, respondent does not dispute that claimant's injury occurred "in the course" of her employment. Accordingly, we focus our analysis on whether claimant's injury "arose out of" her employment with respondent.

¶ 17 The phrase "arising out of" refers to the origin or cause of an employee's injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). An accident is said to "arise out of" one's employment if it has its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the injury. *Orsini*, 117 Ill. 2d at 45. As a general rule, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by his employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her duties. *Orsini*, 117 Ill. 2d at 45. If the employee is exposed to a risk to a greater degree than the general public, the injury is similarly considered to have arisen out of the employment. *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). If, however, the injury results from a hazard to which the employee would have been equally exposed apart from the employment, then the injury does not arise out of the employment. *Orsini*, 117 Ill. 2d at 45. The Commission's determination that an injury arose out of one's employment involves a question of fact, and its decision on the matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Rodin*, 316 Ill. App. 3d at 1227. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Will County Forest Preserve District v. Illinois*

*Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 15.

¶ 18 In this case, the Commission cited three reasons why claimant's injury arose out of her employment, including a finding that claimant's injury occurred while engaged in activities she might reasonably be expected to perform incident to her assigned duties. The record supports this factual finding. Claimant was employed by respondent as a caregiver at an assisted living facility. Claimant's assigned duties included helping residents of the assisted living facility in their activities of everyday living. In accordance with these duties, claimant was assisting a resident take a shower. Claimant testified that she was concerned that the resident might slip because the shower was producing an abundance of soap suds. As a result, claimant took hold of the resident with her right hand, turned left, extended her left arm, and removed the soap dish which was causing the suds to accumulate in the shower. As claimant was performing these activities, she felt a "pop" in her neck and experienced pain travel down her right arm. The evidence supports a finding that claimant sustained the injury at issue while attempting to ensure the safety of a resident at the assisted living facility, an act which claimant might reasonably be expected to perform incident to her assigned duties. Thus, we cannot say that the Commission's finding that claimant sustained an injury "arising out of" her employment is against the manifest weight of the evidence.

¶ 19 Respondent nevertheless insists that claimant was merely engaged in the act of "reaching" at the time of the injury. Respondent categorizes this activity as "personal in nature" and "not in any way peculiar to her employment." Respondent's argument ignores the fact that, at the time of the occurrence, claimant was engaged in an activity she might reasonably be expected to perform incident to her assigned duties, *i.e.*, ensuring the safety of a resident of the assisted living facility. Respondent also argues that the documentary evidence admitted at the arbitration hearing supports the denial of her claim. According to respondent, "the written evidence in the record relative to accident reporting *** makes clear the claimant said absolutely nothing on the date of the occurrence about holding the resident, lifting anything, or moving in an awkward manner." Admittedly, the history of injury contained in the written documents is not always consistent and it is not as detailed as claimant's testimony at the arbitration hearing. That said, however, it was the province of the Commission to judge the credibility of the witnesses, determine the weight to assign the testimony, and resolve conflicts in the evidence. *McRae v. Industrial Comm'n*, 285 Ill. App. 3d 448, 451 (1996). Having reviewed the record submitted on appeal, and given the Commission's role in interpreting the evidence, we cannot say that the inconsistencies identified by respondent are sufficient to overturn the Commission's finding that claimant's injury arose out of her employment.

¶ 20 Respondent also contends that the Commission's decision is inconsistent with two decisions from the supreme court (*Board of Trustees of the University of Illinois v. Industrial Comm'n*, 44 Ill. 2d 207 (1969), and *Greater Peoria Mass Transit District*, 81 Ill. 2d 38), and one decision from this court (*Hansel & Gretel Day Care Center v. Industrial Comm'n*, 215 Ill. App. 3d 284 (1991)). In *Board of Trustees of the University of Illinois*, 44 Ill. 2d 207, the supreme court upheld the trial court's reversal of a Commission decision awarding benefits to a teacher's assistant who injured his back while turning in his chair. *Board of Trustees of the University of Illinois*, 44 Ill. 2d at 215. The court found that the claimant simply turned

in his chair and suffered the injury and noted that there was no suggestion that the chair was defective or unusual in any way. *Board of Trustees of the University of Illinois*, 44 Ill. 2d at 214-15. The court further noted that claimant's medical history showed that the affected disc had degenerated to such a degree prior to the occurrence that any normal activity would have caused the disc to rupture. *Board of Trustees of the University of Illinois*, 44 Ill. 2d at 215.

¶ 21 In *Greater Peoria Mass Transit District*, 81 Ill. 2d 38, the claimant, a 32-year-old bus driver, returned from her route and proceeded to the driver's room to place public schedules and transfers on a window ledge. The claimant testified that she dropped the documents, and, as she leaned over to pick them up, she lost her balance and stumbled. The claimant was unsure if she hit something, but stated that she began to feel pain in her right shoulder. The claimant was diagnosed with a dislocated shoulder and underwent surgery. The supreme court set aside the Commission's decision to award benefits. *Greater Peoria Mass Transit District*, 81 Ill. 2d at 40-44. The court relied heavily on medical testimony that because the claimant had previously dislocated her shoulder and was therefore subject to repeated subluxations, any normal activity could have precipitated the dislocation of the claimant's shoulder. *Greater Peoria Mass Transit District*, 81 Ill. 2d at 43.

¶ 22 In *Hansel & Gretel Day Care Center*, 215 Ill. App. 3d 284, the claimant, a teacher, was sitting in a child's seat during a meeting. In the process of standing up, the claimant caught and injured her knee. The Commission found the claimant's accident compensable, but this court set aside the decision of the Commission. *Hansel & Gretel Day Care Center*, 215 Ill. App. 3d at 293-94. We relied on medical testimony that the claimant had a history of knee locking and, as such, her knee could have been injured performing "the activities of everyday life."

¶ 23 This case is distinguishable from the three cases cited by respondent. In each of those cases, the reviewing court determined that the claimant's employment bore no relationship to the injury for which compensation was sought. In so holding, the courts relied on medical testimony that each claimant's condition had degenerated to the point that any normal activity could have resulted in the injury at issue. *Board of Trustees of the University of Illinois*, 44 Ill. 2d at 215; *Greater Peoria Mass Transit District*, 81 Ill. 2d at 43; *Hansel & Gretel Day Care Center*, 215 Ill. App. 3d at 293-94. Here, in contrast, while there is a notation by Penn in respondent's accident report that claimant was told that her injury "could have happened anywhere anytime and nothing in particular caused it to happen," this is not borne out by any of the medical records submitted at the arbitration hearing.

¶ 24 III. CONCLUSION

¶ 25 For the reasons set forth above, we affirm the judgment of the circuit court of Tazewell County, which confirmed the decision of the Commission.

¶ 26 Affirmed.