Workers' Compensation
Commission Division
FILED: March 7, 2011

No. 1-10-0560WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROBERT PASSERI, SR.,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-L-50983
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and ROSEMONT	)	
EXPOSITION SERVICES,	)	Honorable
	)	Sanjay T. Tailor,
Defendants-Appellees.	)	Judge, Presiding

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice McCullough and Justices Hoffman, Holdridge, and Stewart concurred in the judgment.

ORDER

Held: The Commission's finding that claimant failed to establish injuries arising out of and in the course of his employment is not against the manifest weight of the evidence. Claimant's injuries occurred when he slipped on black ice while traversing a public sidewalk on his way to a job site from a parking garage. However, there was no evidence that either the sidewalk or the garage were under the employer's control.

> Further, respondent did not direct claimant which route to travel from the garage to the job site and claimant was not exposed to a greater risk by walking on the sidewalk since the garage was used by the general public and they were therefore required to traverse the same walkway to reach their destinations.

Claimant, Robert Passeri, Sr., filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)) for injuries he sustained on February 22, 2007, when he slipped and fell on an icy sidewalk on his way to work for respondent, Rosemont Exposition Services. The arbitrator denied compensation, finding that claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment. Thereafter, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator and the circuit court of Cook County confirmed. On appeal, claimant urges that that Commission's finding is against the manifest weight of the evidence. We affirm.

I. BACKGROUND

The following evidence was adduced at the arbitration hearing on claimant's application for adjustment of claim. Claimant was a union laborer and member of Teamster's Local 727 (union). The union provides members to work trade shows at exposition centers in the Chicago area, including the Donald E. Stephens Convention Center (Stephens Center) in Rosemont. Employers, including respondent, contact the union when they need members to perform work. A union member then receives a telephone call from the union office informing him or her of the next job assignment. Union members reporting to the Stephens Center for assignments with respondent would first check in with respondent's union steward. On a union member's first day, he or she would complete payroll forms and be given an employee number. If a union member had previously worked for

respondent, he or she would simply receive a specific assignment at check in since he or she would already have an employee number and have been entered in respondent's payroll system. According to claimant, most work assignments are "day-by-day."

Respondent directed employees to park in the William Street garage, which is free to union members. Respondent prohibits union members from parking in the lots directly adjacent to the Stephens Center. Posted signs also specifically prohibit parking in the lots adjacent to the Stephens Center. The William Street garage is open to, and regularly used by, the general public, including guests of and exhibitors at the Stephens Center and employees and patrons of restaurants and hotels located in the area. The Stephens Center has four entrances accessible to union members, one of which is adjacent to the area where union members check in before working.

On February 21, 2007, claimant, then 66 years old, received a telephone call directing him to report to the Stephens Center at 8 a.m. the following day for a job with respondent. On February 22, 2007, claimant, who last worked for respondent in April 2005, parked in the William Street garage. After claimant exited the garage, he was walking on the public sidewalk in front of a nearby hotel when he slipped and fell on "black ice." Claimant sustained a broken left femur as a result of the fall. Claimant never arrived at the Stephens Center and respondent did not pay claimant for his attempted appearance. After claimant recovered from his injury, he was released to return to work, but opted to take retirement instead. Claimant did not believe that respondent owned, maintained, or controlled the sidewalk where the injury occurred.

Claimant related that the William Street garage is west of and across River Road from the Stephens Center and that there are sidewalks on both the west and east sides of the street. According

to claimant, there are two ways to walk from the William Street garage to the Stephens Center. One route involves traversing a sidewalk and crossing River Road at ground level. The other route involves using an enclosed, pedestrian overpass between the William Street garage and the Stephens Center. Claimant explained that he does not use the pedestrian overpass because:

> "[O]ne time *** it was pouring rain and I didn't want to walk in the rain, so I took the overpass, and it lets you off in the lobby. There are three places to go, either in the exhibit, where all the booths are or to a restaurant or to outside. I wanted to go through the exhibit floor, so I had to walk all the way back to where I'm supposed to check in. The guard said you cannot go there until 8 o'clock. *** So I had to walk out, take the long way around, all the way around the building to check in with the [union]."

Claimant testified that the ground-level path was "the most direct route" between the William Street garage and the Stephens Center.

Mike Hanson, the union steward at the time of claimant's accident, testified that claimant was not instructed how to travel from the William Street garage to the Stephens Center. He also stated that although union members are told that the union office is just inside the south door of the Stephens Center, they can enter the facility through any one of the four doors.

The arbitrator denied claimant compensation, finding that claimant failed to prove that he sustained accidental injuries arising out of and in the course of his employment with respondent. The arbitrator explained that, as a general rule, when an employee slips and falls, or is otherwise injured, at a point off of the employer's premises while traveling to and from work, the injuries are not compensable unless: (1) the employee's presence at the place where the accident occurred was

required in the performance of his or her duties and the employee is exposed to a risk common to the general public to a greater degree than other persons or (2) the employee sustained injuries in a parking lot provided by and under the control of the employer. The arbitrator determined that neither exception applied in this case. The Commission affirmed and adopted the decision of the arbitrator, and the circuit court of Cook County confirmed the decision of the Commission. This appeal ensued.

II. ANALYSIS

On appeal, claimant challenges the Commission's finding that he failed to prove that he sustained accidental injuries that arose out of and in the course of his employment with respondent. The Act provides benefits to any individual who suffers an accidental injury "arising out of" and "in the course of" his or her employment. 820 ILCS 305/2 (West 2006); *Mores-Harvey v. Industrial Comm'n*; 345 Ill. App. 3d 1034, 1037 (2004); *Homerding v. Industrial Comm'n*, 327 Ill. App. 3d 1050, 1053 (2002). Both elements must be present at the time of the injury to justify compensation, and it is the burden of the employee to establish them by a preponderance of the evidence. *Hosteny v. Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Whether an injury arose out of and in the course of one's employment is a question of fact for the Commission to determine and the Commission's decision will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Mores-Harvey*, 345 Ill. App. 3d at 1037. A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *City of Chicago v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1093 (2007).

An injury is said to "arise out of" one's employment if it originates 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). Similarly, if an employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is said to arise out of the employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. The phrase "in the course of" employment refers to the time, place, and circumstances under which the accident leading to the injury occurred. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57. We note, however, that the mere fact that an employee's duties take him or her to the place of injury and that, but for the employment, the employee would not have been there, is insufficient, by itself, to support a finding that the injuries arose out of and in the course of the employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 63.

As a general rule, accidental injuries sustained *on* an employer's premises within a reasonable time before and after work are deemed to arise in the course of the employment. *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 490 (2004). However, where an employee slips and falls at a point *off* of the employer's premises while traveling to and from work, the resulting injuries will not be considered to have arisen out of and in the course of the employment unless (1) the injuries were sustained in a parking lot provided by and under the control of the employer or (2) the employee's presence at the place where the accident occurred was required in the performance of his or her duties and the employee is exposed to a risk common to the general public to a greater degree than other persons. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 484 (1989); *Mores-Harvey*, 345 Ill. App. 3d at 1037-38. In this case, claimant's injury occurred at a point off of respondent's premises. Thus, his injury is compensable only if he can

establish that he falls within one of the two exceptions set forth above.

With respect to the parking-lot exception, we find *Reed v. Industrial Comm'n*, 63 Ill. 2d 247 (1976), instructive. In *Reed*, the employee slipped and fell on a patch of ice after leaving work, apparently on her way to a municipality-owned parking lot. The place where the employee fell was neither on the employer's property nor in the parking lot. Nevertheless, the employee argued that the parking-lot exception applied because the employer had "an arrangement" with the municipality whereby its employees were allowed to park in the lot at a reduced rate. Despite this "arrangement," the supreme court held that the parking-lot exception did not apply because the accident did not take place in the lot but on a *public way* between the lot and the employee's workplace. *Reed*, 63 Ill. 2d at 249; see also *Hess v. Industrial Comm'n*, 79 Ill. 2d 240, 241-42 (1980) (denying compensation to employee struck by an automobile while crossing public street between the employer's plant and the employer's parking lot because the street was not under the employer's control); *Osborn v. Industrial Comm'n*, 50 Ill. 2d 150, 151-52 (1971) (same). The facts of this case are similar to those in *Reed*. Here, claimant slipped and fell while walking from a parking garage to his place of employment. The owner of the garage had an "arrangement" whereby union members parked at no charge. Like the employee in *Reed*, claimant's fall did not occur in the parking lot. It occurred on a *public* sidewalk. Further, there was no evidence that either the William Street garage (where claimant parked his car) or the sidewalk upon which claimant slipped and fell were under respondent's control. See *Bommarito v. Industrial Comm'n*, 82 Ill. 2d 191, 194 (1980) (noting that absent some evidence in the record, the court was unable to assume that location of the employee's accident was on the employer's premises). Therefore, we conclude that the parking-lot exception

does not apply.

In addition, we do not find sufficient evidence of a compensable injury under the second exception. As noted earlier, under the second exception, injuries which occur off of the employer's premises are compensable if (1) the employee's presence was required in the performance of his or her duties, and (2) the employee is exposed to a risk common to the general public but to a degree greater than other persons. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 484; *Mores-Harvey*, 345 Ill. App. 3d at 1037-38. The Commission, in affirming and adopting the decision of the arbitrator, concluded that claimant failed to establish that his presence at the location of the injury was required in the performance of his duties or that he was exposed to any risk greater than that of the general public. The evidence of record supports the Commission's findings.

With respect to the application of the second exception, *Illinois Bell Telephone Co.*, 131 Ill. 2d 478, is instructive. In *Illinois Bell Telephone Co.*, the employee worked at a store located in a shopping mall. On the day of the accident, the employee left the store and began walking toward 1 of 10 exits from the mall. When the employee was in a "common area" about 12 feet from an exit door, her left leg skidded and she fell. Based on these facts, the supreme court concluded that the employee did not sustain a compensable injury. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 486. Initially, the court concluded that the employee's presence at the site of the accident was not required for the performance of her duties. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 485. In this regard, the court noted that the employee testified that she was not required by her employer to use any particular mall entrance or exit. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 485. Indeed, the employee admitted using entrances and exits other than the one she was using when she was injured. *Illinois*

Bell Telephone Co., 131 Ill. 2d at 485. Further, although the employee testified that the floor was waxed and slippery, the court found no evidence that the employee was exposed to a greater risk by walking across the common area than that to which the public was exposed. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 485. The court noted that the common area where the employee slipped was open to the general public during the business hours of the mall. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 485.

In this case, we initially point out that claimant was not in the performance of his duties at the time of the accident. Rather, claimant was walking from the William Street garage to the Stephens Center *prior* to checking in with the union steward. Moreover, like the employee in *Illinois Bell Telephone Co.*, claimant failed to prove that he was required to be where the accident occurred. Claimant testified that there were four entrances to the Stephens Center. While the check-in desk for union members was adjacent to the south entrance of the Stephens Center, respondent did not require claimant to enter a particular door to access the facility. Furthermore, claimant himself testified that there are at least two ways to travel from the William Street garage to the Stephens Center: a covered, pedestrian overpass or a ground-level route. Respondent did not direct claimant which route to use and claimant acknowledged that he had used both routes in the past, although he preferred the ground-level route because it was less circuitous. Accordingly, we find that claimant's presence at the accident site was not required in the performance of his duties.

We also find that claimant failed to establish that he was exposed to a risk common to the general public to a greater degree than others. Claimant identifies this risk as "black ice." However, it is clear that use of the William Street garage was not limited to union members assigned to work

for respondent. The lot was used by patrons of nearby restaurants and hotels as well as the guests and exhibitors of the Stephens Center. These individuals presumably had to traverse the public way upon which claimant slipped and fell to reach their destinations. Thus, claimant was not exposed to a greater risk by walking on the sidewalk than that to which the general public was exposed. See *Illinois Bell Telephone Co.*, 131 Ill. 2d at 485. Because neither exception to the general rule regarding accidental injuries occurring off of an employer's premises applies, we find that the Commission's decision denying claimant compensation is not against the manifest weight of the evidence.

Claimant nevertheless insists that a contrary result is required based on *Bommarito*, *Homerding*, *Mores-Harvey*, and *Litchfield Healthcare Center*. All four cases, however, are distinguishable. In *Bommarito*, the employee was required to enter and exit the employer's premises through a rear door that was accessed via an alleyway. On the date of the accident, the employer, a department store, was getting ready for a big sale. As a result, the alley was crowded with trucks and filled with debris. When the employee was about eight feet from the door, she walked around a truck and tried to avoid walking into a car parked in the alley. As the employee walked around the car, she stepped into a hole, fell, and injured her elbow, ankle, and wrist. In finding the employee's injuries to be compensable, the *Bommarito* court explained that the employer "created" a special risk or hazard "whereby the [employee] was forced to dodge traffic and debris in order to gain admission to her place of work." *Bommarito*, 82 Ill. 2d at 198. Unlike the employer in *Bommarito*, respondent here did not "create" any special risk or hazard by directing union members to park in the William Street garage. In particular, there is no evidence in this case that claimant's injury occurred while

he was using a route dictated by respondent or that claimant had to dodge traffic and debris to reach the Stephens Center. Rather, claimant was injured when he slipped and fell on an icy public sidewalk. As noted above, this is the same risk to which the general public was exposed.

In *Homerding*, the employee, a nail technician, worked in a beauty salon located in a strip mall. The strip mall consisted of several stores and two parking lots, one in front of the building and one in the back. The salon itself had a rear entrance that led to the back lot. The parking lots were owned and maintained by the strip mall, but the salon's lease obligated it to pay a share of the common area costs. The salon's owner insisted that he had no policy regarding where employees parked their cars. However, the employee testified that she had been instructed to park in the rear lot. The employee arrived at work one morning and parked her car in the back lot. She entered the store through the rear door and began setting up her work station. Realizing that she needed additional supplies that were in her car, the employee went to retrieve a supply case. While carrying the case in her left hand, the employee slipped and fell on some ice about five feet from the employer's door and injured her wrist. Based on the foregoing evidence, we found that the risk of injury to which the employee was exposed was greater than that of the general public. *Homerding*, 327 Ill. App. 3d at 1054. We pointed out that the employee was required to park in the rear of the salon, that the salon financially contributed to the maintenance of the rear lot, and that the employee needed certain supplies to perform her job. *Homerding*, 327 Ill. App. 3d at 1054. We further explained that "[b]ut for the demands of her job, [the employee] would not have needed to make a second trip to her car nor negotiate the ice between her car and the salon door while carrying a large case." *Homerding*, 327 Ill. App. 3d at 1054. Unlike this case, the employee in *Homerding* slipped

and fell in a *parking lot*, not on a *public sidewalk*. Further, there was no evidence in this case that respondent financially contributed to, maintained, or controlled either the William Street garage or the sidewalk upon which claimant fell.

In *Mores-Harvey*, the employee worked as a waitress at a restaurant operated by the employer. One morning, the employee arrived at work and parked her car behind the employer's restaurant in the parking lot that surrounded the building. As the employee exited the car, she slipped and fell on ice. The employee testified that it had snowed and was very cold outside. Further, the employee "understood" that the employer maintained the lot. However, on the morning in question, the parking lot had not been cleared. The employee testified that restaurant workers were directed to park on either the side or the back of the parking lot so that customers could park in front. The employee further testified that although no one told her that she had to use the restaurant's lot, there was no other place to park. Noting that the employer maintained and provided the parking lot surrounding its restaurant in part for the use of its workers, we determined that the employee's injury was compensable under the parking-lot exception. *Mores-Harvey*, 345 Ill. App. 3d at 1039-40. As noted above, here the parking-lot exception is inapplicable because claimant's accident did not occur in a parking lot provided by and under the control of respondent for the use of its workers.

In *Litchfield Healthcare Center*, the employee worked as a certified nursing assistant at a residential health care facility operated by the employer. The facility was the sole-occupant of a two-story building, which was surrounded by parking areas on three sides. Sidewalks ran from the parking areas to doors located on each of the three sides of the building. The employer maintained

both the building and the surrounding areas. The employee testified that when she began working at the facility, a secretary "suggested" that she park her car in the north lot. On the day of the accident, the employee arrived at work, parked her car in the north lot, walked to the entrance of the building, and punched in. The employee immediately realized that she left a piece of equipment in her car. The employee testified that the equipment was required by her employer and that she could be disciplined if she did not have it. After retrieving the equipment, the employee began walking back to the building when she tripped on an uneven piece of concrete and "rolled" her ankle off of the sidewalk. Based on this evidence, we upheld the Commission's award of benefits. *Litchfield Healthcare Center*, 349 Ill. App. 3d at 490-91. We found that the injury was sustained in the course of employment because the accident occurred after the employee had punched in and was in the process of retrieving a piece of equipment needed to perform her job. *Litchfield Healthcare Center*, 349 Ill. App. 3d at 490. The employee's injury arose out of her employment because the risk to which the employee was exposed–an uneven sidewalk–was a neutral risk and the employee was exposed to the risk to a greater extent than that to which the general public was exposed because she used the north lot regularly at the suggestion of the employer. *Litchfield Healthcare Center*, 349 Ill. App. 3d at 490-91. *Litchfield Healthcare Center* is distinguishable as that case involved an injury occurring *on* the employer's premises. *Litchfield Healthcare Center*, 349 Ill. App. 3d at 490. As noted above, claimant's injury occurred on a *public* sidewalk *off* of respondent's premises.

Claimant also states that he was "clearly placed in a position of increased risk by the nature of his employment, specifically because of [respondent's] edict that employees must park at the William Street Garage, then walk back to the Convention Center." Essentially, claimant argues that

because he was at the location where the accident occurred because of his job, his injury can be said to arise out of and in the course of his employment. However, the positional risk doctrine has been rejected by our supreme court. See *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548-50 (1991); *Illinois Bell Telephone Co.*, 131 Ill. 2d at 485-86.

Finally, claimant contends that the Commission failed to recognize the special considerations inherent in the nature of his job. Claimant contends that as a union member, he has no regular job site or work base. He therefore reasons that his job is more akin to that of a traveling or on-call employee. We disagree as claimant's assignment for respondent did not require him to travel away from the Stephens Center in order to perform his job. See *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 68 (1975) (explaining that courts generally regard employees whose duties require them to travel away from their employer's premises as "traveling employees"); *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 694 (1993) (same).

III. CONCLUSION

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

Affirmed.