2012 IL App (1st) 113521WC-U
No. 01-11-3521WC
Order filed: November 13, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SETH KORNBLUM, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and SOUTHWEST AIRLINES, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Cook County. No. 11-L-50678 Honorable Margaret Brennan, Judge, Presiding.

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

ORDER

¶ 1 *Held:* Claimant's injury was not causally related to his employment when it occurred when claimant fell while walking on a poorly lit and unfamiliar dock.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Seth Kornblum, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2008)) alleging he sustained an

injury to his left ankle while in the employ of respondent, Southwest Airlines. The arbitrator agreed and awarded claimant medical expenses in accordance with "the fee schedule, PPO, or other contractual agreement as may be applicable," temporary total disability (TTD) in the amount of $18,289.86, and permanent partial disability (PPD) in the sum of $44,403.30 while recognizing that respondent was entitled to a credit of $27,861.32 pursuant to section 8(j) of the Act (820 ILCS 305/8(j) (West 2008)). The Commission reversed the decision of the arbitrator. It found the claimant—a traveling employee—engaged in conduct prior to his accident that was of such a nature that it broke the causal chain between claimant's employment and his injury. The circuit court of Cook County confirmed the Commission's decision, and, for the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 Claimant is employed by respondent as a pilot and is based out of Chicago. On Saturday, September 26, 2009, he piloted an airplane from St. Louis to Tampa, arriving at 7:30 p.m. He was scheduled to depart Tampa at 4 p.m. the next day. After the passengers departed the airplane, claimant and his flight crew were transported by shuttle bus to the Bay Harbor Hotel. A restaurant called Crabby Bill's was attached to the hotel. The complex was situated on the beach.

¶ 6 At about 8:30 p.m., claimant and several co-employees met at Crabby Bill's. There was a bar, which was full of people. A band was playing. Claimant testified that he remained at Crabby Bill's until sometime after 2 a.m., consuming five beers and two shots. He stated he did not feel intoxicated at the time he left the bar. He, a flight attendant (Chantel Tanghe), and two or three other employees walked down to the water. Tanghe wanted to see if there was somewhere that jet skis could be rented, which she intended to do sometime in the future. The group walked onto a dock, that was poorly lit. There was a seven-inch gap between the edge of the walkway and a hand rail. Claimant stepped into this area and fell, injuring his ankle. Two men helped claimant return to the

hotel, where Tanghe called for medical assistance.

¶ 7 The arbitrator found that claimant was a traveling employee. He then found that the activities in which claimant was engaged—namely, socializing and drinking—were reasonable and foreseeable in the context of claimant's layover. The Commission agreed that claimant was a traveling employee and that generally speaking, the fact that claimant was socializing and drinking was reasonable and foreseeable. It also noted that there was no objective evidence in the record indicating claimant was intoxicated. However, it also found that the particular conduct in which claimant was engaged when he was injured—specifically, "venturing onto an unfamiliar and unlit dock at approximately 2:00 AM in order to determine, or help a co-worker determine, whether jet skis were available for use later that day"—was neither reasonable nor foreseeable. Accordingly, the Commission determined that claimant's accident was not causally related to his employment, and it reversed the decision of the arbitrator. The circuit court of Cook County confirmed the Commission's decision, and this appeal followed. We will discuss additional evidence as it is pertinent to the issues raised by the parties.

¶ 8 III. ANALYSIS

¶ 9 The sole issue raised by claimant is whether the Commission erred in finding that his injury was not causally related to his accident. Causation presents a question of fact. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). Thus, we conduct review using the manifest-weight standard. *Id*. Therefore, we will reverse a decision of the Commission only if an opposite conclusion is clearly apparent. *Mobil Oil Corp. v. Industrial Comm'n*, 327 Ill. App. 3d 778, 789 (2002). It is primarily the role of the Commission to weigh evidence, assess the credibility of witnesses, resolve conflicts in the evidence, and draw inferences from the record. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655 (1999). With these standards in mind,

we now turn to the issues raised by the parties.

¶ 10 As a preliminary matter, we note that the parties agree that claimant was a traveling employee at the time of his injury. See *Insulated Panel Co. v Industrial Comm'n*, 318 Ill. App. 3d 100, 102-104 (2001). Indeed, both the Commission and the arbitrator accepted this premise. We agree with this characterization as well. Accordingly, the following standards apply. Generally, a traveling employee is deemed to be in the course of his employment from the time the employee leaves home until he or she returns. *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545 (2010). Nevertheless, a claimant still bears the burden of proof on the issue of causation. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985). The inquiry into whether a traveling employee's injury is compensable focuses on "the reasonableness of the conduct in which he was engaged and whether the conduct might normally be anticipated or foreseen by the employer." *Cox*, 406 Ill. App. 3d at 545-46. Hence, "a traveling employee may be compensated for an injury as long as the injury was sustained while he was engaged in an activity which was both reasonable and foreseeable." *Id*. at 546. Recovery may be had for injuries sustained during recreational activity so long as the activity was reasonable and foreseeable. *Complete Vending Services, Inc. v. Industrial Comm'n*, 305 Ill. App. 3d 1047, 1052-53 (1999).

¶ 11 A number of cases provide sound guidance in the application of these principles. For example, in *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 574 (1980), a traveling employee left his motel room and went to a tavern at 10 p.m. He remained at the tavern until 2 a.m. Despite being in an unfamiliar town, the employee attempted to walk back to the motel through an "unsavory" part of the town. *Id*. The motel was three miles away. *Id*. The court noted that he did not inquire about taxi services. *Id*. He attempted to follow railroad tracks back to the motel, and he was injured when he was struck by a train. *Id*. at 572. The court found held that the

employee's injuries were unrelated to his employment. *Id*. at 576. It based its holding not on the fact that the employee went to a tavern and had a few drinks but because the employee's "late-night excursion through an unfamiliar and potentially hazardous area" was not reasonable or foreseeable. *Id*. at 575-76.

¶ 12 Similarly, in *U.S. Industries, Production Machine Division v. Industrial Comm'n*, 40 Ill. 2d 469, 470-71 (1968), the claimant traveled to Pennsylvania to inspect and repair a forging press. He determined that certain parts had to be replaced, so he ordered them. *Id*. at 471. He then went to a motel, remained in his room for a while, and then went to have dinner at the motel's restaurant. *Id*. He consumed two alcoholic drinks. *Id*. At approximately midnight, he drove into the mountains, apparently for recreational purposes. *Id*. At about 1:30 a.m., while driving through a nearby town, he fell asleep and his car struck a monument in the town's square. *Id*. He was injured in the accident. *Id*. The supreme court found that the accident was not causally related to the claimant's employment, explaining, "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." *Id*. at 475.

¶ 13 Also relevant to the issue before us is *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274 (1999). In that case, the claimant drove an ATV at a high rate of speed down an unfamiliar dirt road. *Id*. at 280. Though helmets were available, the claimant chose not to wear one. *Id*. There was testimony that the claimant was driving too fast for conditions. *Id*. This court affirmed the Commission's decision that the manner in which the claimant used the ATV was not reasonable or foreseeable and that, in turn, compensation was not warranted. *Id*. at 280-81.

¶ 14 These three cases provide ample support for the Commission's decision. In all three cases, the claimants exposed themselves to unfamiliar hazards. In this case, claimant wandered out on to

an unlit and unfamiliar dock. Moreover, the reason for this excursion was to determine if jet skis were available to be rented some time in the future. Regardless of whether we would come to the same result as the Commission in the first instance, we certainly cannot say that an opposite conclusion to that of the Commission is clearly apparent. As such, its decision is not contrary to the manifest weight of the evidence. *Mobil Oil Corp.*, 327 Ill. App. 3d at 789.

¶ 15 Claimant makes a number of arguments as to why this result should not obtain. Claimant attempts to draw a nexus between the fact that it was foreseeable that claimant would be drinking and socializing in the hotel bar and the events that occurred after claimant left the bar. While it might be reasonable and foreseeable that employees would leave the bar and walk around the hotel grounds or go to the beach, we fail to see how this would apply to an employee's decision to enter a potentially hazardous area. Claimant cites no cases in which a similar inference was drawn to the one he here advocates.

¶ 16 Claimant contends that the fact that other employees were on or near the dock at the time of his accident indicates that it was foreseeable that employees would be on the dock (claimant again provides no supporting authority). Claimant also presented the testimony of another pilot employed by Southwest Airlines who fell in the same place as claimant when he, too, ventured on to the dock after dark. He was not injured. Claimant points to nothing in the record that would indicate respondent was aware of any of these events. More importantly, this evidence, at best, created a conflict in the record. Resolving such conflicts is for the Commission. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538 (2007).

¶ 17 Claimant cites a number of cases that are plainly distinguishable. In *District 141, International Association of Machinists & Aerospace Workers v. Industrial Comm'n*, 79 Ill. 2d 544, 549, 550 (1980), the supreme court affirmed a decision of the Commission awarding benefits to an

employee who was killed when he was involved in an automobile accident after a night of drinking. Unlike the present case, where the accident occurred on an unlit and unfamiliar dock, there is no indication that the location of the accident in *District 141* was similar in these respects. *Id*. Claimant cites *Bradford Supply Co. v. Industrial Comm'n*, 50 Ill. 2d 190 (1971). This case is distinguishable in that it involved an ordinary road (though wet from rain) upon which the claimant had previously traveled. *Id*. at 193. Claimant also cites a number of decisions of the Commission, which—as they are not precedential—we will not consider. See *S & H Floor Coverings, Inc. v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266 (2007). In sum, we do not find any of claimant's arguments persuasive.

¶ 18 IV. CONCLUSION

¶ 19 In light of the foregoing, the decision of the circuit court of Cook County is affirmed.

¶ 20 Affirmed.