2015 IL App (1st) 123722WC-U

Order filed April 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

CHICAGO TRANSIT AUTHORITY.	)	Appeal from the Circuit Court
	)	of Cook County, Illinois.
Plaintiff-Appellant,	)	
	)	
	)	
v.	)	Appeal No. 1-12-3722WC
	)	Circuit No. 12-L-50064
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (Luis Gonzalez,	)	Honorable
Defendant-Appellee).	)	Daniel T. Gillespie,
	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Stewart, and Harris concurred in the judgment.

¶ 1 *Held*: The Commission's finding that the claimant suffered injuries under the "mental-mental" theory was neither contrary to law nor against the manifest weight of the evidence.

¶ 2 The claimant, Luiz Gonzalez, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits for psychological/mental injuries allegedly sustained while working as a bus driver for the Chicago Transit Authority ("CTA" or "employer") on four specific dates: March 3, 2010; March 22, 2010; April 13, 2010; and April 26, 2010. A section 19(b) hearing was held on August 9 and August 17, 2010, before Arbitrator Brian Cronin. The arbitrator found that the claimant suffered

injuries arising out of and in the course of his employment as it related to each of the four instances. The arbitrator awarded temporary total disability (TTD) benefits for the period from April 27, 2010, through August 9, 2010 (the date of the hearing), for a total of 15 weeks. The arbitrator also awarded $9,520.20 for reasonable and necessary medical expenses. The employer sought review before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision with additional facts and analysis.[1] The employer then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the decision of the Commission. The employer then filed a timely appeal with this court.

¶ 3 **FACTS**

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on August 9 and 17, 2010.

¶ 5 The claimant began his employment with the employer in 1999, when he was hired as a janitor/laborer at the 77th Street Garage. In late 2007, the claimant was given the choice of a

[1] The record shows that the matter was heard by oral argument before a three-member panel of the Commission members Nancy Lindsay, Yolaine Dauphin, and Molly Mason on August 31, 2011. The Commission decision issued on December 21, 2011, was signed by Commission members Charles DeVriendt, Ruth White, and Commissioner Dauphin. Commissioner DeVriendt indicated that, based upon the decision worksheet, Commissioner Mason was part of a majority to reach the decision issued in this matter. Commissioner White indicated that, based upon the decision worksheet, Commissioner Lindsay dissented from the majority decision. The panel members unanimously indicated that this decision should issue in accordance with *Ziegler v. Industrial Comm'n*, 51 Ill. 2d 137 (1972).

lay-off or training to become a bus operator. After successfully completing a training program, the claimant assumed the duties of bus operator in February 2008, driving a route out of the Archer Avenue garage. The claimant testified that the clientele on that route was a mixture of races and socio-economic backgrounds. He also testified that he encountered no problems on this route.

¶ 6 In February 2010, the employer closed the Archer Avenue facility and the claimant chose to be transferred to the employer's 74th Street facility based upon its relative proximity to his home in Tinley Park, Illinois. The claimant was permitted to choose from a number of available routes and chose an east/west route which ran along 63rd Street between Stoney Island Avenue and Kedzie Avenue. The claimant drove this route on Monday, Tuesday, Wednesday, and Friday. His hours were 7 a.m. to 12 p.m. and 1 p.m. to 6 p.m., with an hour lunch during the interim. On each day except Friday, the claimant was required to pick up students at Englewood High School at the end of the school day.

¶ 7 The claimant testified that the most problematic part of his route was the stop at Englewood.[2] He testified that every day at the school, there were at least five police cars present when school was dismissed. The bus would completely fill up with 80 or 90 students, many of whom refused to pay. He testified that when he confronted a student who did not pay, he was usually threatened with physical violence. He also testified that 90% of all the passengers on his route were African American, while he was a fair-skinned Latino American. He testified that he constantly received verbal threats from many of the students who would taunt him with statements such as "white boy, we're gonna fuck you up!"

[2] The arbitrator took judicial notice that the Englewood neighborhood had "one of the highest, if not the highest, rate[s] of violent crime in the City of Chicago."

¶ 8 On March 3, 2010, at approximately 9 a.m. the claimant observed three young males follow another young male onto the bus. The three immediately attacked and attempted to rob the lone youth once the bus started moving. The claimant drove a short distance until he was able to flag down a police officer. The officer entered the bus and was able to stop the altercation and arrest one of the assailants. A surveillance video, activated by the claimant, recorded the incident. Following the incident, the claimant completed an incident report and was required to appear in court as a witness in a criminal proceeding related to the assault.

¶ 9 The claimant testified that, although at no time did any of the attackers attempt to make any physical contact with him, the event nevertheless caused him great fear and apprehension. He testified that he became even more anxious when he found out that the silent alarm on the bus did not work. The claimant did not seek medical or psychological treatment following this occurrence.

¶ 10 Shortly after that incident, the claimant sought a transfer to another route. From March 5, 2010, to March 8, 2010, the claimant was assigned to a route on Pulaski Street. The claimant requested a transfer back to the 63rd Street route after he realized that he might not get as many hours on the Pulaski Street route. The claimant testified that when he asked to return to the 63rd Street route, he told his supervisor that he felt as threatened and apprehensive on the Pulaski route as he had on the 63rd Street route.

¶ 11 On March 22, 2010, at approximately 3 p.m., the claimant drove his bus away from Englewood after filling the bus with students. He testified that as he pulled away from the school, one of the students engaged an emergency apparatus, referred to as the “cherry,” the purpose of which was to stop the bus and open an emergency door in the rear of the bus. The claimant testified that the students would occasionally activate the “cherry” in order to allow

other riders to get on the bus through the emergency door without paying a fare. In order to start the bus after the "cherry" has been activated, the claimant would have to reset the device. On this particular occasion, the claimant was having trouble restarting the bus following a cherry pulling incident. A female student passenger became extremely upset with the claimant's failure to get the bus started. The claimant testified that she screamed and cursed at him repeatedly. She approached the claimant, lunged toward him while he was seated at the steering wheel, then reached passed him started wildly pressing buttons on the dashboard. While the passenger was pressing buttons on the dashboard, the claimant activated a silent alarm. The claimant was then able to restart the bus and drove a short distance. The female passenger exited the bus and was taken into custody by police responding to the claimant's silent alarm. Surveillance video corroborated the claimant's testimony regarding the incident. The claimant filed an incident report at the end of his shift.

¶ 12 The claimant testified that the event caused him extreme anxiety and made him feel as if he had no control of the bus. He did not, however, seek medical or psychological treatment after this occurrence.

¶ 13 On April 13, 2010, at approximately 4 p.m., the claimant had stopped his bus to pick up passengers when several youths opened a panel on the right rear section of the bus and disabled the battery, thus cutting power on the bus. The claimant was forced to exit the bus to reconnect the power. As he got off bus, the claimant shouted at the youths and they retreated a few yards away to a nearby bus stop shelter. The claimant testified that he went to the rear of the bus and opened the panel to manually reconnect the battery cables. While doing so, the youths taunted the claimant with racial epithets. The claimant testified that one of the youths then through a

bottle and a brick at him. The claimant also testified that, after he reconnected the power, he got back on the bus and the youths followed him onto the bus.

¶ 14 Surveillance video showed the claimant chasing the youths away as he exited the bus and walked toward the battery panel. The video also showed the group of youths standing at the bus stop several feet away from the claimant while he worked on the battery. The video also showed a can or similar object roll toward the claimant from the direction of the youths, and then showed the youths follow the claimant onto the bus.

¶ 15 The claimant testified that, after he got on the bus, he drove to the end of the route. He called the CTA control center and reported the incident and also reported that he was having chest pains and trouble breathing. A Chicago Fire Department rescue squad was summoned and within a few minutes arrived to treat the claimant. The rescue report recorded the claimant's complaints of breathing difficulty, chest pressure and left arm numbness, as well as symptoms of hyperventilation. The report further indicated that the claimant gave a history of "almost being assaulted" and that he believed he suffered a "panic attack" as a result.

¶ 16 The claimant was transported to Jackson Park Hospital where the emergency department attending physician recorded a clinical impression of chest pain – angina following an incident of anxiety. The claimant testified that, after this incident he was afraid to go to work and began to experience nightmares.

¶ 17 On April 26, 2010, the claimant went to work early so he could speak to his supervisor about the March 3, 2010, incident. He had received a letter from the State's Attorney's office requiring him to appear as a witness in the criminal proceedings arising from that incident. The claimant testified that he was very upset by the letter and the prospect of testifying and wanted help from the employer in dealing with the prospect of testifying in court. He testified that he

left the meeting with his supervisor upset and with a feeling that he had been abandoned by the employer to deal with the experience on his own. It was in this mental condition that he began his route that morning.

¶ 18 The claimant testified that he remained in this upset state all morning while driving his route. While on his lunch break, he began to experience shortness of breath and what he characterized as a "panic attack." He called CTA control which called an ambulance to his location. The rescue squad report indicated the claimant complained of being "anxious" and was having an "attack" due to a problem with a gang and his upcoming testimony against those gang members. The claimant was transported to Holy Cross Hospital where the claimant complained of chest pain and left arm numbness. The emergency department report noted a differential diagnosis of acute generalized anxiety and a discharge diagnosis of acute anxiety. The claimant was advised upon discharge to seek medical and psychological treatment. The claimant testified that he then sought treatment from Dr. Daniel Kelley, a psychologist recommended to him by his Union. The claimant testified that, prior to seeking treatment from Dr. Kelley, he had never sought treatment for anxiety, psychological or emotional problems.

¶ 19 On April 27, 2010, the claimant was examined by Dr. Kelley. Dr. Kelley recorded a history of repeated verbal attacks with "reportedly racially-motivated physical violence" directed at the claimant. Dr. Kelley diagnosed the claimant as suffering from adjustment disorder, acute stress disorder, and post-traumatic stress disorder (PTSD). Dr. Kelley ordered the claimant off work as a result of his psychiatric condition and had not released him to return to work by the time of the arbitration hearing. Dr. Kelley was of the opinion that eventually the claimant could be returned to his current job duties with proper therapy and counseling. Dr. Kelley opined that the claimant's current condition of psychological ill-being was causally related to his

employment. The claimant remained under the psychological treatment of Dr. Kelley at the time of the arbitration hearing.

¶ 20 The claimant testified that he believed he could return to work if he were given a different route and that he contacted his Union to try to arrange a transfer.

¶ 21 Allen Gordon, CTA Transportation Manager, testified for the employer. He testified that the 63rd Street route served at least six high schools and the Pulaski Street route served five high schools. At each school, a CTA supervisor and a Chicago police officer are posted when school gets out each day. The officials are assigned to these locations due to the high volume of students trying to board CTA buses and the known propensity of disturbances to arise while students are boarding the buses. Gordon also testified that almost all of the buses operating on these routes have some form of driver safety shield, eight different surveillance cameras, a system that allows the driver to contact CTA control directly, and a silent alarm that the driver can activate anytime there is a security issue. He testified that these buses also have an audio monitoring system that allows the driver to activate a microphone to allow CTA control to hear what is happening on the bus and to dispatch appropriate personnel to assist the bus driver. Gordon also acknowledged that the claimant told him that he felt just as in danger on the Pulaski route as he had on the 63rd Street route.

¶ 22 The arbitrator found that the claimant's current condition of psychological ill-being arose out of and in the course of his employment and awarded TTD and medical benefits. The arbitrator found that the claimant testified credibly and presented no indication of malingering or symptom magnification. The arbitrator determined that the claimant's claim was a "mental-mental" claim requiring him to show that his current condition of psychological ill-being was the result of a "shocking event that produces an immediate disability of injury." (citing *Pathfinder v.*

Industrial Comm'n, 62 Ill. 556, 563 (1976)). The arbitrator, noting that the claimant continued working without seeking treatment until the April 13, 2010, incident, found that none of the four events described by the claimant rose to the level of sudden, severe emotional shock as required under *Pathfinder*. The arbitrator then asked rhetorically: "Can a 'mental-mental' claim be deemed compensable if the non-physical trauma involves multiple events over time that lead to the gradual deterioration of the employee's emotional well-being?" Relying upon the holding in *Runion v. Industrial Comm'n*, 245 Ill. App. 3d 470 (1993), the arbitrator answered the question in the affirmative, stating that the claimant could recover for non-traumatically induced mental injuries if he could establish: (1) the mental injuries arose from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions existed in reality, from an objective standpoint; and (3) the employment conditions, when compared to non-employment conditions, were the major contributory cause of the claimant's mental condition. The arbitrator determined that the claimant's credible testimony and the video evidence established by a preponderance of the evidence that the claimant had met the three conditions for recovery established in *Runion*.

¶ 23 The employer sought review of the arbitrator's decision before the Commission, which affirmed and adopted the arbitrator's award with additional facts and analysis. Specifically, the Commission noted that the claimant had established the *Runion* factors for each of the four instances described by the claimant. The Commission agreed with the arbitrator's finding that the claimant's PTSD and general anxiety disorder arose from situations of a greater dimension of emotional strain and tension than the day-to-day situations all employees experience. The Commission noted particularly the video surveillance tapes to establish that the stressful conditions existed from a real and objective standpoint. The Commission also determined that

the claimant's extremely stressful work environment was the major contributory cause of his current condition of psychological ill-being. The Commission found that there was no evidence of any non-employment related contributory causes, noting the lack of any evidence of pre-existing mental or psychological maladies and the arbitrator's observation that the claimant did not present any indication of malingering or symptom magnification. The Commission also credited Dr. Kelley's opinion that the claimant's PTSD was causally related to his work experiences, noting the lack of any contradictory medical or psychological opinion.

¶ 24 The employer sought judicial review of the Commission's decision in the circuit court of Cook County which confirmed the decision of the Commission. The employer now appeals.

¶ 25 **ANALYSIS**

¶ 26 In Illinois, psychological injuries are compensable under one of two theories, either "physical-mental," when the psychological injuries are related to and caused by a physical trauma or injury (*Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167, 171 (2001)), or "mental-mental," when the claimant's psychological injuries are related to and caused by non-physical work-related factors. *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC ¶ 19. The "mental-mental" cases can be divided into two types. Generally, the claimant must suffer a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm * * * though no physical trauma or injury was sustained" (*Pathfinder*, 62 Ill. 2d at 563; *Matlock*, 321 Ill. App. 3d at 171). We have recognized, however, a type of "mental-mental" case that does not involve shock traceable to a single event but rather to a series of work-related events. *Chicago Transit Authority*, at ¶ 19. We have been particularly hesitant to allow recovery under this type of "mental-mental" theory. *Id.* We have repeatedly noted that "[m]ental disorders which develop

over time in the normal course of the employment relationship do not constitute compensable injuries." *Matlock*, 321 Ill. App. 3d at 171; see also *Northwest Suburban Special Education Organization v. Industrial Comm'n*, 312 Ill. App. 3d 783, 788 (2000). Recovery for non-traumatically-induced mental injuries is limited to those who can establish that: (1) The mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the nonemployment conditions, were the major contributory cause of the mental disorder. *Chicago Board of Education v. Industrial Comm'n*, 169 Ill. App. 3d 459, 468 (1988); *Matlock*, 321 Ill. App. 3d at 171; *Northwest Suburban*, 312 Ill. App. 3d at 787; *Runion*, 245 Ill. App. 3d at 473. Applying these standards, we have rejected claims for mental disabilities resulting from arguments with coworkers (*City of Springfield v. Industrial Comm'n*, 214 Ill. App. 3d 301 (1991)), disciplinary actions taken by employers (*Esco Corp. v. Industrial Comm'n*, 169 Ill. App. 3d 376 (1988)), and personnel matters unrelated to the claimant's work (*Runion*, 245 Ill. App. 3d at 474).

¶ 27 The instant matter involves the rationale articulated in the line of cases regarding non-traumatically-induced mental injuries. Thus, we find that the Commission appropriately applied the three-part test articulated in *Chicago Board of Education* and *Runion*. Whether the facts support a finding that the claimant has met the three-part test is a question of fact for the Commission to determine and the Commission's findings will not be overturned on appeal unless they are against the manifest weight of the evidence. *Runion*, 245 Ill. App. 3d at 474. A decision is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). It is the function of the

Commission to determine the facts, judge the credibility of witnesses, and draw reasonable inferences from competent evidence. *Skidis v. Industrial Comm'n,* 309 Ill. App. 3d 720, 724 (1999). Where different inferences can be drawn from the evidence, a reviewing court must not disturb the Commission's decision unless it is against the manifest weight of the evidence. *Id.*

¶ 28 The first issue to be determined is whether the claimant established that his mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience. *Runion,* 245 Ill. App. 3d at 473. The Commission found that each of the four events described situations of greater dimensions than the day-to-day emotional strain and tension which all employees must experience. Additionally, the Commission adopted the arbitrator's taking notice of the fact that these incidents occurred in an area of Chicago with a significantly high crime rate. The employer maintains that the Commission's findings were against the manifest weight of the evidence where the claimant did not provide evidence of the stress and tension to which other CTA drivers were exposed. We disagree. Each of the incidents, as described by the claimant, could reasonably be found to be above and beyond the emotional strains and tensions to which employees in general, and CTA bus drivers in particular, might experience. The claimant worked in an environment where his "customers" continuously and repeatedly subjected him to verbal abuse and racial attacks, threatened him with physical assaults and violence, invaded his work space while yelling obscenities, threw objects at him, refused to pay and ignored his requests for payment, and vandalized his bus with impunity. In addition to these stressful conditions, the claimant was forced to witness three of these customers violently attack and rob a fourth customer and was then required to testify against the perpetrators. The fact that these individuals were young high school students may reasonably have made the strain and tension worse. Given this record, it is

not against the manifest weight of the evidence for the Commission to find that the claimant was subjected to strain and tension far beyond that to which any employees might experience.

¶ 29 The employer argues, however, that if the strain and tension to which the claimant was exposed was compared to other bus drivers, his experience was not "far beyond that to which all employees must experience." The employer maintains that the strain and tension described by the claimant as occurring on the four dates at issue was no more than that which any of the CTA's bus drivers experienced from "discourteous passengers and unruly teenagers." The employer did not present evidence at the arbitration hearing regarding the relative levels of stress and tension to which all of its bus drivers are exposed. Rather, it asks this court to take judicial notice that the claimant's stress and tension was "no different" from any of its other bus drivers. The employer invites this court to review its website to find that the claimant's experiences were nothing more than a typical two months in the life of a CTA bus operator.

¶ 30 The facts adduced at the arbitration hearing do not support the employer's claim that the claimant's experiences on those four dates were typical of all its bus operators. First, and foremost, the record established that, unlike the typical CTA bus operator, the extreme stress and tension to which the claimant was exposed came from just one portion of his job – picking up students at Englewood High School. The record indicates that all of the stress and tension to which the claimant was exposed came from these students. These students were the ones who threatened the claimant with violence, yelled obscenities and racial epithets, assaulted and robbed one another in his presence, refused to pay the proper fare and dared the claimant to do something about it, vandalized and disabled the bus, and then threatened the claimant and threw objects at him while he tried to repair the damage they caused. The unrebutted testimony of the claimant established that these passengers were far more than merely "discourteous" and

"unruly"; they were violent and dangerous. Every day at 3 p.m., the claimant was exposed to this violent and dangerous environment and, on four occasions in a two month span, the strain and tension produced symptoms which led to a diagnosis of PTSD. While the claimant presented no direct evidence of the stress levels of other CTA drivers, the evidence in the record was sufficient to support an inference that the claimant's stress and tension was greater. The record and the reasonable inferences drawn from the evidence, clearly supports the Commission's finding that the claimant was exposed to stress and tension of greater dimensions than the day-to-day emotional strain and tension which all employees must experience. *Runion*, 245 Ill. App. 3d at 473.

¶ 31 We next address whether the Commission correctly determined that the stress and tension experienced by the claimant at work "exist[ed] in reality, from an objective standpoint." *Runion*, 245 Ill. App. 3d at 473. Here, the Commission adopted the arbitrator's findings that the claimant credibly testified to the occurrences and that the employer presented no evidence to rebut that the occurrences happened as the claimant related. Based upon the evidence, we find that the Commission's findings that the claimant suffered stress and tension which, according to Dr. Kelley, caused his PTSD and anxiety, was not against the manifest weight of the evidence.

¶ 32 As to the third *Runion* requirement, the Commission's finding that the claimant's employment conditions were the major contributory cause of his mental disorder was not against the manifest weight of the evidence. Whether a claimant's current condition of ill-being is causally related to his employment is a question of fact for the Commission, and its findings as to causation will not be overturned on appeal unless they are against the manifest weight of the evidence. *Skidis*, 309 Ill. App. 3d at 724. Here, the Commission noted the lack of any mental or psychological conditions prior to the four incidents at issue. Additionally, the Commission

accepted Dr. Kelley's expert psychological opinion that the claimant's current condition of ill-being, PTSD with general anxiety, was causally related to the claimant's work experiences. We also note that the employer presented no contrary expert medical or psychological evidence. Given this record, it cannot be said that the Commission's finding as to causation, the third *Runion* requirement, was against the manifest weight of the evidence.

¶ 33 The employer lastly maintains that the claimant is not entitled to compensation because he knowingly and voluntarily placed himself in these stressful situations. This argument is without merit. It is well-settled that the Act imposes liability on an employer for injuries arising out of and in the course of employment and negates the traditional common law defenses such contributory negligence and assumption of risk. See *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 295-96 (2007). Moreover, it is well-settled that an employer takes its employees as it finds them, even in a "mental-mental" context. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199 (2002). The employer maintains that, by seeking a return to the Englewood route after working the Pulaski route, the claimant voluntarily returned to the risks *after* he became aware of them and was, therefore, not entitled to compensation. The claimant likens the claimant's actions to a situation where an employee invited a verbal confrontation with his manager (*General Motors Parts Division v. Industrial Comm'n*, 168 Ill. App. 3d 678, 687 (1988)), or where a claimant throws the first punch in a brawl (*Franklin v. Industrial Comm'n*, 341 Ill. App. 3d 128, 135 (2003)). We disagree.

¶ 34 Whether an employee engaged in intentional conduct sufficient to remove him from the protections of the Act is a question of fact for the Commission to determine and such a determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *General Motors*, 168 Ill. App. 3d at 680. We note that this issue was not raised before

the Commission. Thus, to the extent that the employer raises it for the first time on appeal, we find it to have been waived. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567 (1993).

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Cook County, which confirmed the decision of the Commission is affirmed and the matter is remanded to the Commission for further proceedings.

¶ 37 Affirmed and remanded to the Commission.