2016 IL App (1st) 150179WC-U

Order filed: October 28, 2016

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MAXCINE HARVEY,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 1-15-0179WC
	)	Circuit No. 14-L-50463
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (City of Chicago, Appellees).	)	Honorable Robert Lopez-Cepero, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that she sustained an accident arising out of and in the course of her employment was against the manifest weight of the evidence where the claimant slipped on a slippery, recently waxed floor in a lobby located in the employer's premises.

¶ 2 The claimant, Maxcine Harvey, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for wrist and knee injuries she sustained while she was employed by respondent City of Chicago

(employer). After conducting a hearing, an arbitrator found that the claimant had failed to prove that she sustained an accident arising out of and in the course of her employment. Accordingly, the arbitrator denied benefits and found all other issues raised by the parties moot.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 FACTS

¶ 7 The claimant worked for the employer as a Grants Specialist. Her job duties included researching various federal, state, and local grants for the employer. The claimant worked from 9:00 a.m. to 5:00 p.m. Pursuant to the employer's policy, she was allowed two 15-minutes breaks each day. The building in which the claimant worked was owned by the employer.

¶ 8 The claimant testified that, on the morning of November 3, 2010, she used one of her authorized breaks to run a personal errand. She exited the building through a door that opened onto Chicago Avenue and left the premises to perform a personal financial transaction at a nearby ATM machine. When she returned, the claimant re-entered the building through the same door (*i.e.*, through the Chicago Avenue entrance). She walked approximately 7 or 8 paces into the building when her left leg slipped and she fell on the floor. She fell on her knee and right hand and elbow, and she immediately felt "a lot" of pain. She screamed, and one of her coworkers, Janice Yarbrough, came to her assistance. Yarbrough went to get the security guard, who came over to the claimant and asked her whether she needed an ambulance. The claimant

responded in the affirmative, and an ambulance was called.[1]

¶ 9 The claimant was taken by ambulance to the emergency room at St. Mary and St. Elizabeth Medical Center in Chicago. The ambulance crew's medical record noted that the claimant was found in the lobby of the building where she worked lying on her side complaining of pain in her right wrist, elbow, and knee "due to [a] mechanical fall on [a] slippery floor." When the claimant arrived at the hospital, x-rays were taken of the claimant's right wrist, right elbow, and right knee. The wrist x-ray revealed a comminuted fracture (*i.e.*, a break or splinter of the bone into more than two fragments) of the distal right radius. The knee x-ray showed a suprapatellar joint effusion. The elbow x-ray was normal. One of the hospital's medical records notes that the claimant reported falling at home. However, another hospital record reflects that the claimant attributed her injuries to a slip and fall at work.

¶ 10 On November 5, 2010, the claimant saw Dr. William Heller, an orthopedic surgeon, for treatment of her fractured right wrist. The claimant told Dr. Heller that she sustained injuries to her right wrist during a fall which occurred on a waxed floor in the lobby of her worksite. Dr. Heller noted some worsening of the alignment in the wrist since the claimant's wrist was x-rayed and casted at the emergency room. He took the claimant off work and ordered the claimant to follow up in three days.

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[1] The parties submitted a Report of Occupational Injury or Illness ("injury report") dated November 5, 2010, which was completed by the claimant's supervisor. The injury report reflects that the claimant fell in the lobby of the building at approximately 10:40 a.m., screamed, and a security guard named Cheryl Lopez came to her aid. According to the injury report, the claimant told Lopez that she fell.

¶ 11 On November 9, 2010, the claimant saw Dr. Robert Strugala for treatment of her right knee complaints. Dr. Strugala's examination revealed some tenderness and mild effusion in the knee, but x-rays did not reveal any definite fracture. Dr. Strugala diagnosed the claimant with right knee pain following a fall and ordered an MRI of the right knee.

¶ 12 On December 10, 2010, the claimant returned to Dr. Strugala reporting diminished symptoms but complaining of having some difficulty with activities such as stair climbing. Upon examination, the claimant's right knee showed a "trace effusion at best," some minimal diffuse tenderness over the anterior knee, good motion, and good alignment. Dr. Strugala diagnosed the claimant with right knee pain post fall with mild underlying degenerative joint disease in the right knee which had improved. He ordered physical therapy and kept the claimant off work.

¶ 13 Three days later, the claimant returned to Dr. Heller, who removed the cast on her right wrist. X-rays showed that the wrist fracture had healed in acceptable alignment in all planes. Dr. Heller referred the claimant to physical therapy and released her to return to full duty work effective January 2, 2011.

¶ 14 The claimant began physical therapy on December 14, 2010. The therapist's record notes that the claimant complained of right knee and right wrist pain and reported that she fell at work on November 3, 2010 when she "slipped on a wet floor, her right knee bent back and she fell on her outstretched right arm." The claimant underwent physical therapy for the right knee and for the right wrist. The claimant continued to follow up with Drs. Heller and Strugala during the course of her physical therapy.

¶ 15 On January 21, 2011, the claimant returned to Dr. Heller reporting minimal complaints of pain in her right wrist. After an examination and additional x-rays, Dr. Heller diagnosed the claimant with a healed right distal radius fracture and continued weakness of grip for which he

recommended additional physical therapy.

¶ 16 On February 15, 2011, the claimant returned to Dr. Strugala after completing physical therapy on her right knee. The claimant noted improvements but complained of continued aching and discomfort which typically occurred after she rose from a seated position and loosened up with ambulation. Dr. Strugala diagnosed the claimant with right knee pain status post fall with mild underlying degenerative joint disease in the right knee and subsequent left hip pain probable hip flexor strain. He administered an injection into the knee.

¶ 17 On March 4, 2011, the claimant returned to Dr. Heller. Dr. Heller noted that the claimant's physical therapy note from March 1, 2011, reflected that she reported no pain or swelling and completely normal function in the right wrist. An examination and x-rays showed good alignment, normal range of motion, no tenderness or crepitus, and a normal neurovascular exam. Dr. Heller diagnosed a healed right distal radius fracture with excellent outcome and released the claimant from care.

¶ 18 The claimant's right knee symptoms continued to improve. On April 14, 2011, the claimant had no right knee pain, showed good strength with extension of her right knee, and was walking regularly without any difficulty. Her hip pain had also resolved. Dr. Strugala diagnosed right knee degenerative joint disease, symptoms dramatically improved, and a left hip flexor strain, greatly improved. He instructed the claimant on home exercises and released her from care.

¶ 19 During the arbitration hearing, the claimant testified that the floor in the area where she fell was "shiny" and looked as if it had just been waxed. The claimant stated that it was the "waxy, slippery floor" that caused her to fall. She testified that, because she worked in the building, she "noticed when [the lobby floor] was dull and when it was shiny," and she was able

to tell when the floor had been waxed. However, she stated that the employer did not put up any signs to indicate the floor had just been waxed either on the day of her accident or at any time in the past. She was not aware of anyone else falling on the waxed floor that day. During the six years that she had worked in the building prior to her November 3, 2010, accident, the claimant had never fallen on a waxed floor.

¶ 20 The claimant testified that, at the time of her fall, she was walking toward the lobby area of the building where the elevators were located so she could take an elevator back to her work area. The area where she fell was open to the public. The claimant noted that she did not usually walk in that area. While traveling to and from work, the claimant normally entered and exited the building from the Superior Street entrance, which was on the opposite side of the building from the Chicago Street entrance that she used immediately before the accident.

¶ 21 The claimant testified that she missed approximately two months from work and did not receive any workers' compensation benefits for that period of time. She also noted that her medical bills were not paid. The claimant stated that, although she was no longer experiencing any pain in her right wrist, she still had some stiffness in her fingers in the right hand. Regarding her right knee, the claimant testified that she still had problems walking down stairs, squatting, getting up from a seated position, and walking certain distances. She also testified that her knee gave way sometimes and she still experienced pain and swelling on the knee, particularly after prolonged flexing of the knee while sitting.

¶ 22 Although the claimant acknowledged that she was no longer receiving medical treatment for her right wrist, she claimed that she was still treating for her right knee. However, the claimant did not proffer any treatment records of medical care after her release from Dr. Strugala’s care.

¶ 23 The claimant initially testified that she had no knee problems prior to her November 3, 2010, work accident. On cross examination, however, the claimant admitted that she had pain in her right knee approximately five months before the accident. The claimant stated that she did not know that she had any degenerative joint disease in the right knee before November 3, 2010.

¶ 24 The arbitrator found that the claimant had failed to prove that she sustained an accident arising out of and in the course of her employment on November 3, 2010. The arbitrator noted that that that the claimant testified that she slipped "on a waxed floor in a lobby entrance/exit that she sometimes used and that was open to the public while returning to work from conducting a personal errand." The arbitrator further noted that there was

> "no evidence that [the claimant] was performing any work-related functions while on her break, that [the employer] required [the claimant] to use the entrance/exit in which she fell, that her fall was somehow peculiar to her employment when she used the particular entrance/exit on her way back into work from her personal errand, or that she was otherwise exposed to any risk greater than that of the general public while traversing the floor on which she fell."

Accordingly, the arbitrator found that the claimant had failed to prove that she sustained a compensable injury arising out of and in the course of her employment with the employer. The arbitrator denied benefits on this basis and found all remaining issues moot.

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

¶ 26 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's ruling.

¶ 27 This appeal followed.

¶ 28 ANALYSIS

¶ 29 The claimant argues that the Commission's finding that she failed to prove that she sustained an accident arising out of and in the course of her employment is against the manifest weight of the evidence.

¶ 30 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]he has suffered a disabling injury which arose out of and in the course of h[er] employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id*. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his or her duties. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989).

¶ 31 The phrase “in the course of employment” refers to the time, place and circumstances of the injury. *Eagle Discount Supermarket v. Industrial Comm’n*, 82 Ill. 2d 331, 338 (1980). If the injury occurs within the time period of employment, at a place where the employee can reasonably be expected to be in the performance of his duties and while he is performing those duties or doing something incidental thereto, the injury is deemed to have occurred in the course of employment. *Id.*; see also *Sisbro*, 207 Ill. 2d at 203 (ruling that an injury occurs "in the course of employment" when it "occur[s] within the time and space boundaries of the employment”); *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1037 (2004).

¶ 32 Accidental injuries sustained on property that is either owned or controlled by an employer within a reasonable time before or after work are generally deemed to arise out of and in the course of employment when the claimant’s injury was sustained as a result of the condition

of the employer's premises. See, *e.g.*, *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 216 (1990) ("Where the claimant's injury was sustained as a result of the condition of the employer's premises, this court has consistently approved an award of compensation."); see also *Hiram Walker & Sons, Inc. v. Industrial Commission*, 41 Ill. 2d 429 (1968) (holding that claimant's fall in employer's ice-covered parking lot was compensable); *Carr v. Industrial Comm'n*, 26 Ill. 2d 347 (1962) (same); *De Hoyos v. Industrial Commission*, 26 Ill. 2d 110 (1962) (same); *Caterpillar Tractor Co.*, 129 Ill. 2d at 62 (suggesting that an injury is causally related to the employment if the injury occurs "as a direct result of a hazardous condition on the employer's premises"); *Mores-Harvey*, 345 Ill. App. 3d at 1040 ("The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim."); *Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC, ¶ 40 (where the claimant slipped on ice in a parking lot furnished by her employer shortly after she arrived at work, the claimant was entitled to benefits under the Act "as a matter of law").

¶ 33 Whether an injury arose out of and in the course of one's employment is generally a question of fact and the Commission's determination on this issue will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19, 10 N.E.3d 403. "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Id.* "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009); see also *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The test is

whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d at 828, 833 (2002). Although this court is reluctant to conclude that a factual determination of the Commission is against the manifest weight of the evidence, we will not hesitate to do so when the clearly evident, plain, and undisputable weight of the evidence compels an opposite conclusion. *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10.

¶ 34 The claimant argues that we should review the Commission's causation finding *de novo* because the material facts related to her fall in this case are not in dispute. Contrary to the claimant's argument, however, some of the material facts were in dispute. For example, the employer disputed that there was any hazard or defect present on the employer's premises at the time of the claimant's fall. In any event, the material facts here are subject to more than a single inference. Accordingly, the Commission's determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Mansfield v. Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶ 28, 999 N.E.2d 832; see also *Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 279, 947 N.E.2d 856, 860 (2011) ("Even in cases where the facts are undisputed, this court must apply the manifest-weight standard if more than one reasonable inference might be drawn from the facts.").

¶ 35 In this case, the claimant testified that her fall was caused by the condition of the employer's premises, *i.e.*, the slippery floor in the lobby of the employer's building. She testified that the floor was "shiny" at the time and looked as if it had just been waxed. The employer did not successfully rebut this testimony,[2] and the Commission did not explicitly reject

[2] In its response brief, the employer disputes that the claimant slipped on a waxed floor and

the claimant's testimony on this issue. Nor is there anything in the Commission's order suggesting that the Commission implicitly rejected the claimant's account of the incident. The Commission did not state or imply that the claimant had failed to prove that she fell on a slippery, recently-waxed floor at the employer's premises. Rather, the Commission denied benefits solely because it found that the claimant had failed to demonstrate that her fall was "peculiar to her employment" or that she was exposed to a risk to a greater extent than the general public. That was error. Because the manifest weight of the evidence suggests that the claimant's fall was caused the condition of the employer's premises, the claimant's injuries are compensable. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40.

¶ 36 In ruling otherwise, the Commission emphasized that: (1) the lobby in which the claimant fell was open to the general public; and (2) the claimant fell in a part of the lobby that she was not required to traverse by virtue of her employment and did not regularly traverse as part of her usual work commute. The Commission apparently found that these facts rendered the claimant's injury non-compensable because the claimant was not exposed to a risk of injury greater than the risk encountered by members of the general public. We disagree. The fact that the lobby was open to the general public is immaterial because the claimant's injury was caused by a hazardous

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asserts that "the defense investigation and records have shown that no hazard or defect was present at the time of the fall." However, the employer cites no testimony or other record evidence supporting this assertion. During the arbitration, the employer presented investigative photographs of the area where the claimant fell. However, these photographs were taken more than a year after the claimant's accident and did not purport to show the condition of the floor at the time of the accident.

condition on the employer's premises. As we noted in *Mores-Harvey*, 345 Ill. App. 3d at 1040 (in the analogous context of an injury suffered in the employer's parking lot),

> "[w]hether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees' use. If this is the case, then the lot constitutes part of the employer's premises. *The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim*." (Emphasis added.)

See also *Chicago Tribune Co. v. Industrial Comm'n*, 136 Ill. App. 3d 260, 264 (1985) (affirming award of benefits for claimant who was injured while walking through a gallery owned by the employer which the claimant was required to traverse in order to get to her work station even though the gallery was open to the general public, and stating that "[i]t is difficult to see how the [employer] can escape liability by exposing the public to the same risks encountered by its employees"). The same reasoning applies here. If an employer allows both its employees and members of the general public to use the lobby of its building, and contemplates that its employees will traverse the lobby on their way to and from work, a hazardous condition in the lobby that causes a claimant's injury is compensable, regardless of whether the employer restricts or dictates its employees' use of the lobby. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40. In other words, the hazardous condition of the employer's premises renders the risk of injury a risk incidental to employment; accordingly, the claimant may recover benefits without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the

general public. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40.

¶ 37 Several of the cases cited by the employer in opposition to this principle are distinguishable because they involve situations where the claimant's injury either occurred outside of the employer's premises (see, *e.g.*, *Illinois Bell Telephone Co.*, 131 Ill. 2d 478 (1989)) or was not caused by the condition of the employer's premises (see, *e.g.*, *Caterpillar Tractor Co.*, 129 Ill. 2d 52). The relevant question in those cases was whether the claimant confronted risks to a greater extent or degree than did members of the general public. Because the injury in this case was caused by the condition of the employer's premises, that question does not govern our analysis.

¶ 38 One further point bears mentioning. As an alternative basis for recovery, the claimant maintains that her claim is compensable under *Eagle Discount Supermarket*, 82 Ill. 2d 331 and other cases involving injuries suffered by employees during a lunch break or while performing other acts of "personal comfort." We disagree. Unlike having lunch, taking a bathroom break, or engaging in a recreational activity on the employer's premises, running a personal errand (in this case, a financial transaction) outside of the workplace is not a "personal comfort" that is incidental to one's employment. Thus, *Eagle Discount Supermarket* and the "personal comfort" cases cited by the claimant are inapposite.

¶ 39 CONCLUSION

¶ 40 For the foregoing reasons, we reverse the judgement of the circuit court of Cook County confirming the Commission's decision, vacate the Commission's decision, and remand the cause to the Commission for further proceedings.

¶ 41 Circuit court judgment reversed; Commission decision vacated; cause remanded.