2012 Ill. App. (1st) 110520WC-U
No. 02-11-0520WC
Order filed February 17, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ANTHONY PELLETIER, Plaintiff-Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION and INDIAN PRAIRIE SCHOOL DISTRICT #204, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Kane County. No. 10-MR-458 Honorable Thomas E. Mueller, 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 decision of the Commission that claimant failed to prove that his unexplained fall resulted in an injury arising out of his employment is not contrary to the manifest weight of the evidence.

¶ 1 Claimant, Anthony Pelletier, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) alleging he sustained an

injury to his right arm and shoulder while in the employ of respondent, Indian Prairie School District #204. His injury occurred when he fell as he ascended a set of stairs. The arbitrator agreed with claimant; however, the Commission did not, finding claimant had not proven his injury was caused by his employment. The sole issue presented in this case is whether the evidence established claimant's fall was caused by his employment. For the reasons that follow, we affirm.

¶ 2 The relevant facts of this case are brief. Claimant was employed by respondent as a school social worker at Waubonsee Valley High School. On December 17, 2007, he fell while walking up a flight of stairs. He extended his right arm, and his arm struck a wall. Claimant heard a crack and sustained an injury to his arm. The fall occurred during a "passing period" during which students would change classrooms, and a large number of students were utilizing the stairs. It had snowed that day. A white substance that claimant testified may have been salt was on the floor. Claimant also testified that there was frequently substantial debris, such as pencils and pens, on the stairs. The fall occurred near the end of the day. Claimant has observed loose risers on the stairs. Claimant agreed that he did not know what actually caused the fall. When he received medical treatment, he told his medical providers that he simply "missed a step."

¶ 3 The arbitrator found that claimant had carried his burden of proving a causal relationship between his employment and his injury. She classified claimant's fall as unexplained. She then noted that the stairs were "crowded with rushing students," which required him to pay attention to those around him rather than the stairs. She considered this the most likely cause of the fall, but noted that it also could have been caused by the fact that there was salt on the steps or that "the stair treads extend slightly from the risers, supporting an inference that he caught his toe on the tread and stumbled." The arbitrator then found that all three inferences "establish employment-related risks."

Finally, she declined to draw any inference from the fact that the stairway is sometimes cluttered with debris, as there was no evidence to establish that it was in such a condition at the time of claimant's fall.

¶ 4 The Commission reversed the decision of the arbitrator, finding that claimant had not proven that he sustained an accident arising out of his employment with respondent. It noted claimant's testimony that he did not know why he fell as well as claimant's statement to medical providers that he " 'missed a step.' " It then found that while the three causes identified by the arbitrator were possible, none were probable. In turn, it found the arbitrator's decision speculative. The Commission relied on *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006), in support of its conclusion. The circuit court of Kane County confirmed the Commission's decision, and this appeal followed.

¶ 5 As an initial matter, the parties disagree regarding the standard of review. Claimant asserts that *de novo* review is appropriate as the facts are undisputed and the sole issue is whether the Commission was correct in relying on *First Cash Financial Services*, 367 Ill. App. 3d 102. See *Uphold v. Illinois Workers' Compensation Comm'n*, 385 Ill. App. 3d 567, 571-72 (2008). Respondent requests that we apply the manifest-weight standard since, though the facts are undisputed, they are not susceptible to a single inference. *Efremidis v. Industrial Comm'n*, 308 Ill. App. 3d 415, 422 (1999). Respondent points out that claimant himself argues various factual possibilities regarding the cause of the fall, such as the fact that he was surrounded by students rushing from one class to another and that the stairs were covered with salt. We note that the evidence was not entirely undisputed. Claimant told medical providers that he simply missed a step while other evidence suggests possible causes for the fall. In short, we will apply the manifest-

weight standard, though we likely would affirm applying a less deferential standard. In any event, we will disturb the decision of the Commission only if an opposite conclusion is clearly apparent. *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1093 (2007).

¶ 6 Before proceeding further, we note claimant spends considerable time arguing that *First Cash Financial Services*, 367 Ill. App. 3d 102, is distinguishable. It is axiomatic that we review the result at which the Commission arrived, rather than its reasoning. *Department of Mental Health & Developmental Disabilities v. Illinois Civil Service Comm'n*, 103 Ill. App. 3d 954, 957 (1982). Hence, even if the Commission's reliance on *First Cash Financial Services* was unsound, it does not necessarily follow that its decision must be reversed. Before we could take that step, claimant, as the appellant, would have to carry his burden of demonstrating that the result was incorrect. *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 606 (2009).

¶ 7 We now turn to the substance of claimant's argument. One of the elements that a worker's compensation claimant must prove is that he or she sustained an injury "arising out of" employment. *Builders Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 1010 (2003). In this case, the parties agree that this case involves an unexplained fall. See *Builders Square, Inc.*, 339 Ill. App. 3d at 1010 (explaining that an unexplained fall is a fall resulting from an unknown, neutral source as opposed to an idiopathic fall, which results from an internal, personal condition of the employee). The "arising out of" element is usually satisfied in the case of an unexplained fall. *Builders Square, Inc.*, 339 Ill. App. 3d at 1010. However, before this element is satisfied, an employee must put forth "evidence which supports a reasonable inference that the fall stemmed from a risk related to the employment." *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478 (2011). Where an injury results from a risk to which the employee is exposed no more than the

general public, the injury does not arise out of employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 59 (1989). In itself, the act of traversing a flight of stairs does not expose a claimant to a greater risk of harm than that faced by the general public. *Baldwin*, 409 Ill. App. 3d at 478.

¶ 8 As the parties agree that this case involves an unexplained fall, the only matter at issue is whether claimant set forth evidence from which it could be inferred that his fall was work-related. Claimant identifies four items of evidence. First, claimant points out that the he was surrounded by students rushing from one class to another at the time of the fall. Second, he notes that the area was routinely littered with debris such as pencils and pens. Further, it was late in the school day, which would have allowed significant time for such debris to accumulate. Third, it had snowed that day, and the stairs were covered with salt. Fourth, when he examined the stairs after his fall, he noted that some of the risers were loose.

¶ 9 The Commission held that concluding that any of these conditions had actually caused claimant's fall would amount to mere speculation. It found that it was equally likely that claimant had "simply missed a step." We cannot say that this finding is against the manifest weight of the evidence. Initially, we note that claimant himself reported to his medical providers that he had missed a step. Further, although claimant identified other possible causes, he could not testify that any of them were the actual cause of his injury. Had any of the other potential causes been the actual cause, it is likely that claimant could have identified it and testified accordingly. We further note that even the arbitrator, who found a causal connection between claimant's injury and employment, rejected debris on the stairs as a cause since there was no evidence any debris was present at the time of claimant's fall. Similarly, though there was evidence that the stairs were full of hurried students,

there was no evidence that claimant was actually distracted by them. The same can be said of the salt on the stairs and the risers, as there is no evidence that claimant slipped or tripped on either of them. As the Commission noted, this court has held that, "[w]here the evidence allows for the inference of the nonexistence of a fact to be just as probable as its existence, the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot reasonably be drawn." *First Cash Financial Services,* 367 Ill. App. 3d at 106.

¶ 10 In short, an opposite conclusion to that drawn by the Commission is not clearly apparent. It was claimant's burden to present evidence that would permit a reasonable inference that his fall was related to his employment. *Baldwin*, 409 Ill. App. 3d at 478. Where the evidence presented indicates that it is equally as likely as not that the fall was unrelated to claimant's job, the evidence does not permit a *reasonable* inference that it was related to employment.

¶ 11 Before closing, we acknowledge that there are certain factual difference between *First Cash Financial Services*, 367 Ill. App. 3d 102, and the instant case. Notably, in *First Cash Financial Services,* 367 Ill. App. 3d at 106, the only possible cause of a fall suggested by the claimant was a dirty floor. This is analogous to evidence in this case regarding debris on the stairs, and it was similarly rejected because there was no evidence that the floor was dirty at the time of the fall (*First Cash Financial Services*, 367 Ill. App. 3d at 106-07). Unlike *First Cash Financial Services,* claimant has set forth other possible causes of his fall (*i.e.*, salt on the stairs (unlike other debris, there was evidence indicating salt was present), defective risers, hurrying students). Assuming, *arguendo*, that this meaningfully distinguishes *First Cash Financial Services,* it does not compel a different result here. The Commission did not rely on *First Cash Financial Services* as being dispositive on the facts; rather, it cited the case for three uncontroversial propositions of law, namely:

the definition of an idiopathic fall; the fact that an injury resulting from a risk to which the public is equally exposed is not compensable; and a working definition of speculation. Thus, the Commission did not use *First Cash Financial Services* inappropriately in arriving at its decision.

¶ 12 In light of the foregoing, the order of the circuit court of Kane County confirming the decision of the Commission is affirmed.

¶ 13 Affirmed.