2016 IL App (3d) 150139WC-U

FILED: April 29, 2016

NO. 3-15-0139WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

KVF QUAD CORPORATION Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Christie Young, Appellees).	))))))))	Appeal from Circuit Court of Rock Island County No. 14MR508 Honorable Clarence M. Darrow, Judge Presiding.

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

ORDER

¶ 1 *Held:* The Commission's determination that claimant suffered an accident arising out of her employment was against the manifest weight of the evidence.

¶ 2 On August 21, 2012, claimant, Christie Young, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from the employer, KVF Quad Corporation. She alleged to have suffered a "serious" injury to her left arm while working on June 20, 2012.

¶ 3 Following a hearing, the arbitrator found claimant failed to prove that she sustained an accidental injury that arose out of and in the course of her employment and denied

her benefits under the Act.

¶ 4 On review, the Illinois Workers' Compensation Commission (Commission) reversed the decision of the arbitrator, finding that claimant sustained accidental injuries arising out of and in the course of her employment and awarded her benefits under the Act. On judicial review, the circuit court of Rock Island County confirmed the Commission's decision.

¶ 5 On appeal, the employer argues the Commission's determination that claimant sustained accidental injuries arising out of and in the course of her employment was error. We reverse the circuit court's judgment confirming the Commission's decision and reinstate the decision of the arbitrator.

¶ 6 I. BACKGROUND

¶ 7 The following evidence relevant to the disposition of this appeal was elicited at the January 17, 2013, arbitration hearing.

¶ 8 Claimant testified that she had been employed by the employer in the shipping and receiving department since February 2011. Her job duties required her to take inventory of parts as they were delivered on trucks, to enter the parts into the computer, and to "tag" them.

¶ 9 The employer required its employees to wear footwear with a steel toe and metatarsal guard. The footwear policy provided that with a purchase receipt, the employer would reimburse its employees up to $100 per year for footwear that met its steel toe and metatarsal guard requirement. While the employer provided a list of three stores in the area known to carry quality footwear, it did not require employees to purchase their footwear from these stores nor did it require employees to buy a particular style of footwear.

¶ 10 Claimant testified that she selected high top boots because they provided "more protection," and that she picked her boots in particular because they had memory foam and "were

the only comfortable ones that [she] tried on." Claimant's boots cost $185 and she was reimbursed $100 by the employer. The lacing system on the boots selected by claimant included eyelets or round holes with lacing of the upper portion accomplished via three pairs of hooks or "speed laces." Claimant testified that she does not wear the safety boots outside of the workplace. On cross-examination, the following colloquy occurred:

"Q. And as I understand it you selected those boots because they had memory foam and they were very comfortable boots?

A. Yes.

Q. You also selected them because they have a high top; they are high top boots, correct, or above ankle boots?

A. Yes, more protection.

Q. There are boots that have steel toes and metatarsal guards that you could have selected that are low tops then, correct?

A. Yes.

Q. Those boots would not have what I will refer to as speed laces that your lace caught in when you turned to get your water; is that correct?

A. Correct.

Q. Your employer requires you to wear steel toed boots with metatarsal guards or metaguards they are referred to typically, correct?

A. Yes.

Q. But they do not issue a particular boot to you; it's up to you to go buy the boot and submit a claim for reimbursement, correct?

A. Yes."

The employer offered into evidence photographs depicting various shoes and boots which met the employer's safety requirements but did not include the speed-lacing system.

¶ 11 Claimant testified that on June 20, 2012, she was working her scheduled shift from 7:30 a.m. to 4:00 p.m. On that day, claimant worked both inside, where it was air conditioned, and outside, where it was "very hot." Claimant testified that from approximately 12:40 p.m. to 1:00 p.m., she had been working outside in the alley tagging parts. At 1:00 p.m., she went into the office to get a drink of water because she "felt dehydrated and weak." According to claimant, she walked into the office and "stood there for a second just to try and absorb some of the cool air." She testified that when she turned to get a bottle of water out of the refrigerator, the "lace on [her] left boot hooked on the hook on [her] right boot and [her] legs just went down." At the time she fell, claimant stated her left arm was extended out.

¶ 12 Immediately after the fall, claimant experienced pain in her left shoulder. She continued working but testified the pain did not get better. On June 21, 2012, claimant sought treatment at Genesis Occupational Health Clinic after being referred there by the employer. Claimant was given work restrictions and medication, and she was told to apply ice to her shoulder. She also completed a short course of physical therapy. When her shoulder did not improve, she underwent a magnetic resonance imaging (MRI) which indicated a left rotator cuff tear and she was referred to Dr. Shawn Wynn, an orthopedic surgeon. On October 1, 2012, Dr. Wynn recommended surgery on claimant's left shoulder to repair her rotator cuff. At the time of

arbitration, claimant had not had surgery to repair her rotator cuff.

¶ 13 On April 18, 2013, the arbitrator issued her decision in the matter. She concluded that claimant failed to prove she sustained an accidental injury that arose out of and in the course of her employment and denied benefits under the Act.

¶ 14 On May 20, 2014, the Commission reversed the decision of the arbitrator, concluding that claimant sustained accidental injuries arising out of and in the course of her employment. Specifically, the Commission found that "even though [claimant] chose the specific type of work boot she was wearing on the date of injury, she was nevertheless required to wear steel-toed boots with metatarsal supports that she would not have been wearing 'but for' her employment," and therefore, claimant "was exposed to a greater risk than the general public and her injury arose out of and in the course of her employment." The Commission awarded claimant $2,263.32 in medical expenses as well as prospective medical treatment in the form of the left shoulder surgery prescribed by Dr. Wynn. On February 2, 2014, the circuit court of Rock Island County confirmed the Commission's decision.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the employer argues the Commission's determination that claimant sustained accidental injuries arising out of and in the course of her employment was error. Specifically, the employer asserts that claimant's injury was not incidental to her employment.

¶ 18 The purpose of the Act is to protect employees against risks and hazards which are peculiar to the nature of the work they are employed to do. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005, 1008 (1987). "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, 797 N.E.2d 665, 671 (2003). An injury occurs "in the course of employment" when it "occur[s] within the time and space boundaries of the employment." *Id*. In this case, it is undisputed that the accident occurred in the course of claimant's employment as she fell at work during normal work hours.

¶ 19 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*. In other words, "the risk of injury must be a risk peculiar to the work or a risk to which the employee is exposed to a greater degree than the general public by reason of [her] employment. *** [A]n injury is not compensable if it resulted from a risk personal to the employee rather than incidental to the employment." *Orsini*, 117 Ill. 2d at 45, 509 N.E.2d at 1008-09**.**

¶ 20 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). Claimant asserts that a *de novo* standard of review is appropriate here because "the facts essential to the analysis of the issues are undisputed and susceptible to but a single inference."

We disagree that the facts are subject to a single inference, and thus, we will review the Commission's determination under the manifest-weight standard. See *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.").

¶ 21 To determine whether a claimant's injury arose out of her employment, we must first determine the type of risk to which she was exposed. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478, 949 N.E.2d 1151, 1156 (2011). There are three categories of risk to which an employee may be exposed: (1) risks that are distinctly associated with one's employment; (2) risks that are personal to the employee; and (3) neutral risks that have no particular employment or personal characteristics, such as those that the general public is commonly exposed. *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 27, 990 N.E.2d 284.

¶ 22 Risks distinctly associated with employment are risks that are inherent in one's employment and include "the obvious kinds of industrial injuries and occupational injuries *** to which the general public is not exposed." *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352, 732 N.E.2d 49, 53 (2000). "In the context of falls, employment risks include tripping on a defect at employer's premises or falling on uneven or slippery ground at the work site." *Id.* "Personal risks include exposure to elements that cause nonoccupational diseases, personal defects or weaknesses, and confrontations with personal enemies." *Id.* "Examples of personal risks include falls due to a bad knee or an episode of dizziness." *Id.* Falls resulting from a personal defect or weakness generally do not arise out of employment. *Id.* Neutral risks have no particular employment or personal characteristics and, in

the context of falls, include falls on level ground or while traversing stairs. *Id*. Injuries resulting from neutral risks do not arise out of employment unless the conditions of employment created a risk to which the general public is not exposed. *Id.*

¶ 23 In this case, the Commission found that claimant's injury arose out of her employment because "she would not have been wearing [the specific boot] 'but for' her employment" and, therefore, "she was exposed to a greater risk than the general public." Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 119, 881 N.E.2d 523, 529 (2007). Here, the record fails to support the Commission's finding that claimant's injury arose out of her employment.

¶ 24 Claimant fell as the result of her left boot lace catching on the hook of her right boot. The risk associated with claimant's fall was not one inherent in her job duties in the shipping and receiving department, and thus, it was not distinctly associated with her employment. Further, claimant's fall was not due to a personal defect or weakness. Rather, the risk of tripping as the result of shoelaces catching on a hook on the opposite shoe is a neutral risk. Accordingly, claimant bore the burden of showing she was exposed to an increased risk of either a qualitative nature , *i.e.*, some aspect of her employment contributed to the risk, or a quantitative nature, *i.e.*, she was exposed to a common risk more frequently than the general public. *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 27, 990 N.E.2d 284.

¶ 25 While the record shows the employer required its employees to wear footwear equipped with a steel toe and a metatarsal guard, so long as those requirements were met, employees were free to choose the specific type of boot they wore. In this case, claimant chose

her particular boot because it was a high top that would provide her "more protection" and it was the most comfortable boot she tried on. Neither claimant's workplace conditions nor the employer's steel toe policy contributed to the risk of claimant falling as a result of her left boot lace catching on a hook located on her right boot. This could have happened anytime or anywhere. In short, claimant is unable to establish she was exposed to a neutral risk to a greater degree than the general public. Because claimant failed to prove she was exposed to an increased risk of falling by virtue of her employment, she has failed to show a compensable injury under the Act.

¶ 26 We also reject claimant's alternative argument that her claim is compensable because "[i]t is reasonable to conclude that her gait was affected by her weakness and exposure to heat." Claimant cites no authority in support of her contention and the Commission's decision did not consider it.

¶ 27 Based on the above, we find the Commission's determination that claimant proved an injury arising out of her employment was against the manifest weight of the evidence.

¶ 28 In closing, we comment on the employer's extensive discussion of an unrelated decision by the Commission in its brief. We have consistently criticized this practice whenever it has occurred. See *Global Products v. Workers' Compensation Comm'n*, 382 Ill. App. 3d 408, 413, 911 N.E.2d 1042, 1047 (2009); *S&H Floor Covering, Inc. v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266, 870 N.E.2d 821, 826 (2007). We reiterate here that Commission decisions are not precedential and should not be cited on appeal.

¶ 29 III. CONCLUSION

¶ 30 For the reasons stated, we reverse the circuit court's judgment confirming the Commission's decision and reinstate the decision of the arbitrator.

¶ 31 Judgment reversed and arbitrator's decision reinstated.