Workers' Compensation
Commission Division
Filed: April 21, 2011

No. 4-10-0312WC



---

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

---

| | |
|---|---|
| BOB MELTON TRUCKING SERVICE, | ) APPEAL FROM THE CIRCUIT |
| | ) COURT OF McLEAN COUNTY |
| Appellant, | ) |
| | ) |
| v. | ) No. 09 MR 138 |
| | ) |
| ILLINOIS WORKERS' | ) |
| COMPENSATION COMMISSION, *et al.*, | ) |
| | ) |
| (VINCENT JOHNSON, | ) HONORABLE |
| | ) MICHAEL J. PRALL |
| Appellee). | ) JUDGE PRESIDING. |

---

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

**ORDER**

HELD: The Commission's finding that the claimant's injuries arose out of and in the course of his employment is not against the manifest weight of the evidence.

Bob Melton Trucking Service (Melton) appeals from an order of the Circuit Court of McLean County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission),

finding that its employee, Vincent Johnson (claimant), sustained a work-related accident on June 1, 2006, which arose out of and in the course of his employment and awarding the claimant benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)). For the reasons which follow, we affirm the judgment of the circuit court and remand this cause back to the Commission.

The following factual recitation is taken from the evidence presented at the June 12, 2007, arbitration hearing on the claimant's petition for adjustment of claim.

The claimant, who on June 1, 2006, was working as an over-the-road truck driver for Melton, testified that he was driving a delivery load for Melton at the time of the accident. He recalled that his contact lenses were drying out and he was rubbing his eyes before he "started sneezing repeatedly" and "lost [his] vision." When he regained his vision, he "was going into the median." He said that he injured his back in the resulting accident. On cross-examination, the claimant agreed that the automobile accident was caused by his sneezing.

In his deposition testimony, Dr. Thomas Zwilling, the claimant's treating physician, stated that he concluded from the claimant's description of the automobile accident that the claimant had suffered a vasovagal reaction, that is, a stimulation of a cranial nerve that led to the claimant's nearly, or actually, passing out for a short period of time. He opined

that it was "very possible" that sneezing could cause such a reaction. Dr. Zwilling testified that he believed the automobile accident, not the sneezing, was the cause of the claimant's back injuries. On cross-examination, Zwilling agreed that the claimant could have suffered from a personal, non-work-related condition that caused him to lose consciousness when he sneezed and that other people without that susceptibility could sneeze without losing consciousness. Zwilling also agreed that the vasovagal reaction to sneezing could have occurred whether the claimant was driving for work or "sitting in church or sitting in the cafeteria."

In a report regarding an examination undertaken at Melton's request, Dr. Morris Soriano opined, among other things, that the claimant's injury was not work-related because there was nothing about his work that made him more likely to sneeze.

Following the hearing, the arbitrator found that the claimant failed to prove that he had sustained a work-related accident arising out of and in the course of his employment. Consequently, the arbitrator declined to award benefits under the Act. The claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission. In a decision with one commissioner dissenting, the Commission reversed the arbitrator's decision and found that the claimant's injury did, in fact, arise out of and in the course of his employment. The Commission awarded the claimant 34 4/7 weeks of

temporary total disability (TTD) benefits, as well as medical expenses and remanded the matter back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E. 2d 1322 (1980). Melton filed a petition for judicial review of the Commission's decision in the Circuit Court of McLean County. The circuit court confirmed the Commission's decision, and this appeal followed.

On appeal, Melton challenges the Commission's determination that the claimant proved that he sustained accidental injuries arising out of his employment on June 1, 2006. An employee's injury is compensable under the Act only if it arises out of and in the course of his or her employment. 820 ILCS 305/2 (West 2004). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). Here, the parties dispute only the "arising out of" issue.

For an injury to "arise out of" the employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the injury. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. In order to meet the "arise out of" requirement, the injury must have occurred while the employee was performing acts he was instructed to perform by his employer. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. A claimant with a preexisting

condition that makes him more vulnerable to injury may obtain compensation under the Act so long as employment was a causative factor of his accidental injury. *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086, 837 N.E.2d 937 (2005). However, more is required than the fact of an occurrence at the claimant's place of work. *Greater Peoria Mass Transit District v. Industrial Comm'n*, 81 Ill. 2d 38, 43, 405 N.E.2d 796 (1980).

There are three types of risks to which an employee may be exposed: (1) risks distinctly associated with the employment, (2) risks personal to the employee, such as idiopathic falls, and (3) neutral risks that have no particular employment or personal characteristics. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799 (2006). Employment risks include the obvious kinds of industrial injuries and occupational diseases and are universally compensated. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795 (2000). Personal risks include nonoccupational diseases and injuries caused by personal infirmities, such as a bad knee or an episode of dizziness, and are generally not compensable unless the claimant has established that the conditions of his employment significantly contributed to the injury by increasing the risk of an accident or the effects of the accident. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63; *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 16, 668

N.E.2d 15 (1996). Neutral risks consist of those risks to which the general public is equally exposed. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163. As with personal risks, compensation for neutral risks depends upon whether the claimant was exposed to a risk of injury to an extent greater than that to which the general public is exposed. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163.

Whether an injury arises out of the claimant's employment is a question of fact to be resolved by the Commission, and its decision in this regard will not be disturbed unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795 (2000). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). A reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665 (2003).

In this case, Melton argues that the claimant's injury was

caused by a personal risk--his susceptibility to a vasovagal event--independent of his employment. However, while we agree with Melton that the heightened risk of a vasovagal reaction was personal to the claimant, we agree with the Commission that the claimant's injury was caused not only by that risk, but also by the additional risks associated with his driving, a job-related task. As the claimant points out, and as the Commission observed, we described this risk in *Stembridge Builders, Inc. v. Industrial Comm'n*, 263 Ill. App. 3d 878, 636 N.E.2d 1088 (1994):

> "The respondent argues that the risk [of a car accident] was purely personal to claimant and was no different from that to which the general public was exposed and, for that reason, is not compensable. However, the supreme court long ago stated:
>
> > 'If the work of the employee creates the necessity for travel, he is in the course of his employment. Persons using the highway are subjected to certain traffic risks and one of them is the danger of collision. The perils of modern-day travel upon the highways are well-known. Risk of accident is an ever-present menace. When it is necessitated by the employment the risks incidental thereto become the risks of the employment and remain so as long as the employee is acting in the course of his employer's business.' "

*Stembridge*, 263 Ill. App. 3d at 881 (quoting *Olson Drilling Co. v. Industrial Comm'n*, 386 Ill. 402, 413, 54 N.E.2d 452 (1944).

As the claimant points out in his brief, there was indeed evidence that he could have had a similar vasovagal reaction in a non-work setting, such as a cafeteria, yet suffered no appreciable harm. The fact that the claimant was driving for work at the time of his reaction, however, added a risk that was specific to his employment. Accordingly, we agree with the Commission's finding that the claimant's injury arose out of his employment with Melton.

Our holding is not inconsistent with that of *Swartz,* a decision upon which Melton relies in its briefs. In *Swartz*, the claimant was driving for his employment when he suffered a fatal cardiac event and veered off of the roadway. *Swartz*, 359 Ill. App. 3d at 1084. There was no indication that the claimant had tried to apply his brakes or steer to avoid an accident, and the only injuries the claimant suffered from the accident itself were superficial abrasions. *Swartz*, 359 Ill. App. 3d at 1084. We upheld the Commission's determination that the claimant's death was not caused by his employment, because his work was not a causative factor in the cardiac event that caused his death. *Swartz*, 359 Ill. App. 3d at 1087-89. In this case, unlike in *Swartz*, an independent, employment-related risk combined with the claimant's medical condition to cause his injury, and there is no

dispute that the claimant's injury would not have occurred but for the fact that he was driving just prior to the accident. Therefore, unlike the claimant in *Swartz*, the claimant here can point to a work-related activity that caused his injury. For that reason, we distinguish *Swartz* and conclude that the Commission correctly found that the claimant's injury arose out of his employment.

For the reasons stated, we affirm the judgment of the circuit court, which confirmed the Commission's decision and remand this matter back to the Commission for further proceedings.

Affirmed and remanded.