2012 IL App (4th) 110373WC-U

NO. 4-11-0373WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ST. JOHN'S HOSPITAL,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County.
	)	
v.	)	No. 10-MR-160
	)	
ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION,	)	
(Ida Blevins,	)	Honorable
	)	John P. Schmidt,
Appellees).	)	Judge, presiding.

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

¶ 1 ORDER

¶ 2 The Commission's decision that the claimant's injuries, which she sustained when she fell down a flight of stairs, arose out of her employment is not against the manifest weight of the evidence.

¶ 3 The claimant, Ida Blevins, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking an award for injuries that

occurred when she fell down a stairway while working for St. John's Hospital (the employer). The arbitrator found that the claimant sustained injuries that arose out of and in the course of her employment and awarded her temporary and permanent benefits. The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). A majority of the Commission affirmed the arbitrator after correcting and clarifying his decision. The employer appealed the Commission's decision to the circuit court of Sangamon County. The circuit court confirmed the Commission's decision, and the employer filed a timely appeal.

¶ 4 BACKGROUND

¶ 5 The evidence presented at the March 4, 2008, arbitration hearing is as follows. The claimant began working for the employer in 1997. On the date of the accident, she worked as a supervisor managing the clerical functions and the compliance and billing issues for the employer's home health department. Her office was located in the employer's north building, one of several buildings used by the employer in that vicinity. Part of her job included attending meetings in other nearby buildings.

¶ 6 On February 20, 2006, she attended a meeting in the Bunn Auditorium in the Women's and Children's Center, which was "beyond the parking garage" from her office. She testified that she attended meetings in this location at least monthly. She explained that the route she took was out the door of her building, through a public parking lot, across a public sidewalk, across the street, and into the other building for the meeting. She said that this was her normal route between the two buildings, that it was the shortest route, and that it took her through a covered parking garage inside the building where the meeting was located. She testified that the employer had never told her which route to take between the buildings and had never instructed her not to take this particular route. She had seen other employees taking the same route in the past. She testified, and the employer acknowledged, that public access to the stairwell where the accident occurred was limited because

the outside door to the stairwell would not open without an employee identification card. However, anyone inside the building could gain access to the stairwell from the upper floors without any employee identification. The claimant testified that non-employees rarely used this stairwell because it was not convenient for them.

¶ 7 On the day of the accident, the claimant was returning from the meeting with three other employees, Cindee Fassero, Roxanne Harling, and Mike Cadwell. The claimant explained how she fell:

> "We were walking back from the managers' meeting through the parking garage, like we always do. I was in the stairwell. I had my hand on the stair rail and turned back to say something to one of my – the people that were with me, and when I turned back, my shoe – there is a little ridge, like sandpaper kind of stuff on the steps, and that sort of caught my shoe, but then when I looked down, I had the papers in my hand and I didn't see where I was stepping, and I missed the step altogether and went head over heels down the stairs then."

She said that she was holding a spiral notebook and the handouts from the meeting, which together were less than an inch thick, in her left hand and that she had her right hand on the stair rail.

¶ 8 Cindee Fassero and Mike Cadwell both testified that descending that stairwell was part of the route they always took after meetings at the Bunn Auditorium when returning to the building where they worked with the claimant. They both agreed that other employees often used the stairway, but non-employees did not typically use it because it was not open to them at the ground level. Cindee testified that she saw the claimant fall. She remembered the claimant reaching for the handrail just before she fell and that she was carrying some papers in her other hand. Cindee said that it looked like the claimant caught her heel on a strip on the landing before the first step down. Cindee did not see anything that appeared defective on the stairs, and the stairway was well lit.

¶ 9 The employer's security supervisor, John Mosher, testified that he was responsible for the

maintenance of the area that included the stairwell where the claimant fell. Although he did not testify that he performed any inspection of the stairwell as a result of the claimant's fall, he had personally inspected the stairwell as part of his job duties and found no defects. He testified that no one had reported any problems or defects in the stairwell since the date of the claimant's accident. He stated that, to his knowledge, the stairwell and the non-skid treads on the stairs complied with all relevant building codes. He acknowledged that the stairway was rarely used by members of the general public, and agreed that the traction strips on the stairs "may be raised a little bit."

¶ 10 The claimant testified that she did not see the step just before she fell because the papers she was holding obscured her vision. She explained how she felt as she fell:

> "Just that I had absolutely no control of where I was falling, and that I went head over heels. I hit my face on the stairs, my left leg hit the corner of the stair. That hurt really bad, and then when I hit the bottom of the stairs, that's where I braced my fall, and then that was – I guess I just was thinking, Oh my God, I am going to die in this stairwell."

She testified that, before the fall, she had never injured her right arm, left leg, or chin.

¶ 11 After the claimant fell, she was taken to the emergency room where an X-ray of her right elbow revealed a fracture of the olecranon. She stated that she had significant pain and tenderness in her right elbow. She also had a contusion on her nose and several abrasions on her left lower leg. Her arm was placed in a splint and she was "discharged on analgesics."

¶ 12 The claimant saw Dr. Daniel Adair on February 21, 2006. Dr. Adair's notes indicate that the claimant's face was bruised, and she did not feel well. On February 23, 2006, Dr. Adair performed a tension band wiring with open reduction and internal fixation of the claimant's right elbow. The claimant followed up with Dr. Adair and returned to work on May 1, 2006.

¶ 13 On September 19, 2006, Dr. Adair examined the claimant and noted that her right arm was painful, and both her right arm and the fingers on her right hand were numb and tingling. He diagnosed her with carpal tunnel syndrome and cubital tunnel syndrome "status post olecranon

fracture." He noted that the claimant was "probably a candidate for carpal tunnel release and possible hardware removal."

¶ 14 The claimant participated in physical therapy to ease the symptoms in her right arm and hand. The physical therapist noted that the claimant had undergone an electromyogram (EMG), "and it was determined that the symptoms are not related to her elbow, but that she does have carpal tunnel on the right side."

¶ 15 On October 11, 2006, Dr. James Fullerton wrote a letter regarding his evaluation of the claimant for a "possible left leg lipoma." Dr. Fullerton noted that the claimant had hit her leg in February 2006, that a hematoma with ecchymosis had formed on the left leg, and that the area was still painful and slightly prominent. He reviewed a magnetic resonance imaging (MRI) test of her left lower leg and found an 8.8 centimeter (cm) by 1.2 cm area on her lower left leg with apparent edema adjacent to the underlying muscle with subcutaneous fat, superficial to the muscle. He thought the area might be a lipoma. The claimant told him that it had not totally resolved since her accident in February. Dr. Fullerton noted that the problem on the claimant's lower left leg could be surgically addressed at the same time Dr. Adair removed the hardware from the claimant's elbow.

¶ 16 In February 2007, Dr. Rodney Herrin examined the claimant and reviewed EMG studies of both of her arms and the MRIs of her right knee and left lower leg. Dr. Herrin determined that the claimant had carpal tunnel syndrome and cubital tunnel syndrome in her right arm and a lesion on her lower left leg. The claimant told him that she continued to have pain in her elbow. Dr. Herrin planned a surgery to repair the carpel tunnel syndrome and cubital tunnel syndrome in her right arm, to remove the hardware from her right elbow, and to excise the lesion from her left lower leg.

¶ 17 On May 18, 2007, Dr. Herrin performed a right anterior submuscular transposition of the ulnar nerve, a right carpal tunnel release, removal of the hardware from the claimant's right olecranon, and excision of the mass from her anterolateral left leg. Dr. Herrin allowed the claimant to return to work on June 1, 2007, but restricted her to no use of her right upper extremity. On

September 13, 2007, he allowed her to work without any restrictions, and on November 1, 2007, he determined that she still lacked full extension of her right arm but did not order any additional treatment. He stated that she had reached maximum medical improvement on that date.

¶ 18 The claimant testified that she did not receive any workers' compensation benefits after her fall during her initial time off work (February 20 through May 1, 2006), and that she used her own paid time off "for that earned illness benefit." During her time off for the second surgery (May 18 through June 1, 2007), she received temporary total disability (TTD) benefits. She testified that, on the date of the arbitration hearing, March 4, 2008, she still had some numbness in her right elbow, and when the weather was bad, her elbow was painful. She said that she still had pain in her leg and that there was a "big divot" where they removed the lesion in her left lower leg, which caused her to limp. The claimant showed the arbitrator the indentation on the front of the shin area of her left lower leg.

¶ 19 The arbitrator found that the claimant sustained injuries that arose out of and in the course of her employment and awarded her 11 6/7 weeks of TTD benefits at the rate of $944.75 per week for the periods of February 20, 2006, through April 30, 2006, and May 18, 2007, through May 31, 2007. The arbitrator also ordered the employer to pay the claimant an additional $619.47 per week for 55.975 weeks because her injuries caused a 2.5% loss of the use of her left leg and a 20% loss of the use of her right arm and $143.12 for necessary medical expenses. The arbitrator gave the employer credit for $4,048.92 it had paid to the claimant for "TTD and/or maintenance benefits."

¶ 20 The arbitrator found that the claimant's job duties required her to walk between buildings owned and operated by the employer in order to attend managerial meetings and that, at the time of her accident, she was returning to her office with three co-workers after a meeting. The arbitrator determined that the claimant caught the heel of her right shoe on the traction strip on the edge of the landing at the top of the stairwell that was part of her normal route back to her office, and, as a result, she fell down the steps to the next landing.

¶ 21 The arbitrator found that the claimant testified that the route she took was the most direct route, the one most commonly used by her co-workers, but one to which the public's access was limited because the security door at the ground level could not be opened without an employee identification badge. The arbitrator noted that Mike Cadwell had confirmed that the stairwell was not normally used by the public and that the traction strip at the edge of the landing where the claimant fell might have been slightly raised. The arbitrator also found that the claimant had been distracted by a co-worker and that her view was partially blocked by the meeting materials she was carrying. The arbitrator concluded that the claimant's work activities "created an increased risk of harm of injury under the circumstances."

¶ 22 The arbitrator found that the medical records revealed that the claimant had sustained direct trauma to her right arm, face, and left lower extremity and concluded that the condition of her right elbow, left leg, and mouth were causally related to the February 20, 2006, accident but that her conditions of right carpal tunnel syndrome and right cubital tunnel syndrome were not causally related to that accident.

¶ 23 The Commission confirmed the arbitrator's decision after making certain corrections and clarifications. The Commission deleted two sentences in which the arbitrator had referred to Mike Cadwell's testimony and replaced them with the following: "John Mosher, who was the Respondent's security supervisor at the time of the Petitioner's fall, testified that members of the general public who park in Respondent's interior lot are able to gain access to the stairs in question but would normally use Respondent's elevators instead. Mosher also testified that the traction strips at the edges of the stairs 'may be raised a little bit' but 'are almost flush.' Under further questioning, Mosher reiterated that it is possible that the strips are slightly raised above the concrete surface of the steps."

¶ 24 The Commission agreed with the arbitrator's conclusion that the claimant faced an increased risk of injury but did not rely on the factors cited by the arbitrator, that the claimant had been distracted by her co-workers and that her view was partially blocked by the papers she was carrying.

The Commission noted that the claimant had not testified that she was distracted but only that she had turned back to speak to her three co-workers immediately before she caught the heel of her right shoe on the strip of the top step and then fell head over heels down the entire flight of stairs. The Commission stated that it relied on the claimant's testimony and Mosher's admission that the strips on the stairs might be raised a little bit above the concrete surface of the steps in its conclusion that "the strips constituted a tripping hazard."

¶ 25 The Commission found that the claimant was at an increased risk of injury by virtue of her use of the stairs to travel within the employer's hospital complex for the purpose of attending work-related meetings. The Commission noted, "While Mosher testified that non-employees who parked in Respondent's inside lot could gain access to the top of the stairs, he acknowledged that such individuals 'would be going out of their way to use that stairwell' and that they would typically 'head south' instead, in order to use the elevators" and that non-employees would be unable to gain access to the stairs from the street. The Commission stated that the parties had focused on comparing the claimant's risk to that of non-employees using the same stairs but that the clear rule in Illinois is that a claimant's risk is to be compared to that of the general public, citing *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795, 806 (2000). The Commission stated that it adhered to that rule in finding the claimant's fall compensable. Aside from the specific corrections and clarifications, the Commission affirmed and adopted the arbitrator's ruling, including his determinations concerning the claimant's entitlement to TTD benefits and the 20 % loss of the use of her right arm and the 2.5% loss of the use of her left leg.

¶ 26 One Commissioner dissented, finding that the claimant failed to prove that her fall arose out of her employment. The dissenting Commissioner found that the claimant was simply walking down a stairway and that catching her shoe on a non-skid tread was a risk everyone in the general public is exposed to. The dissenting Commissioner found nothing about the accident to be related to the claimant's employment.

¶ 27 On appeal, the circuit court ruled that the Commission's finding that the claimant was at an increased risk of injury by virtue of her use of the stairs to travel within the employer's hospital complex for the purpose of attending work-related meetings was not against the manifest weight of the evidence. The court confirmed the Commission's decision, and this appeal followed.

¶ 28 ANALYSIS

¶ 29 The employer argues that the Commission's decision that the claimant's injuries arose out of her employment is against the manifest weight of the evidence because the claimant did not face a risk greater than that of the general public when she fell down the stairs at work. "An employee's injury is compensable under the Act only if it arises out of and in the course of the employment." *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72, 77 (2006). There is no issue here concerning whether the claimant's injuries were sustained in the course of her employment because the accident happened on the employer's premises during her regular work hours. "Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, are generally deemed to have been received in the course of the employment." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Commission*, 407 Ill. App. 3d 1010, 1013-14, 944 N.E.2d 800, 803 (2011). "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 accidental injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667 (1989). "If an employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is also said to arise out of his employment." *Id.*

¶ 30 A claimant does not establish that her injury arose out of her employment merely by showing that the injury occurred at work, but she must also demonstrate that her risk of injury was peculiar to or increased by her work duties. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542,

550, 578 N.E.2d 921, 924 (1991). "If an industrial accident is caused by a risk unrelated to the nature of the employment, or is not fairly traceable to the workplace environment, but results instead from a hazard to which the claimant would have been equally exposed apart from his work, the injury cannot be said to arise out of the employment." *Id.* Whether an injury arose out of a claimant's employment is a question of fact for the Commission to resolve, and a court of review should not disturb the Commission's resolution of that issue unless it is against the manifest weight of the evidence. *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1013, 944 N.E.2d at 803. The Commission's findings of fact are against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.* "The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Id.*

¶ 31 The employer argues that the claimant failed to prove that she sustained an accident arising out of her employment because the act of walking down a flight of stairs did not increase her risk of injury above that of the general public. The employer stresses the fact that the stairway where the accident occurred was fully code-compliant and not defective. The employer urges us to find that the claimant faced a purely personal risk which is not compensable under the Act and that encountering stairs that are in compliance with building codes is not a risk particular to employment. The claimant responds that the determination of whether an accident arose out of the employment is not limited to whether a defect exists.

¶ 32 In Illinois, the courts recognize three general types of risk to which employees may be exposed : "(1) risks that are distinctly associated with the employment; (2) risks that are personal to the employee; and (3) neutral risks that do not have any particular employment or personal characteristics." *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1014, 944 N.E.2d at 804. Risks distinctly associated with employment "include the obvious kinds of industrial injuries and occupational diseases that are universally compensated." *Illinois Institute of Technology*

Research Institute, 314 Ill. App. 3d at 162, 731 N.E.2d at 806. Falling down a flight of stairs does not qualify as a risk distinctly associated with the claimant's employment as a clerical supervisor. However, the risk of falling down a flight of stairs is also not personal to this claimant. See *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63, 731 N.E.2d at 806. Rather, it is a neutral risk, and whether the claimant is entitled to compensation depends on whether she was exposed to the risk of injury to a greater extent than the general public. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163, 731 N.E.2d at 806.

¶ 33 The Commission determined that the claimant's risk of injuring herself by falling down this particular stairway was greater than the risk of the general public because she used the stairway for traveling to work-related meetings, the general public had limited access to the stairway, and the traction strips on the stairs were slightly raised. There is ample evidence in the record to support that conclusion.

¶ 34 The employer particularly relies on *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 853 N.E.2d 799 (2006), arguing that it is "highly persuasive" in its favor. In that case, the claimant slipped and fell, injuring herself in an employee bathroom, but the claimant did not know what caused her to slip and did not observe anything on the floor. *First Cash Financial Services*, 367 Ill. App. 3d at 103, 853 N.E.2d at 802. "Employment related risks associated with injuries sustained as a consequence of a fall are those to which the general public is not exposed such as the risk of tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work related task which contributes to the risk of falling." *First Cash Financial Services*, 367 Ill. App. 3d at 106, 853 N.E.2d at 804. In that case, the court found that the claimant's injuries did not arise out of her employment because she did not present any evidence explaining the cause of her fall. *Id.*

¶ 35 However, the facts of the instant case are distinguishable because the claimant and John Mosher, the employer's security supervisor, both testified that there was a traction strip on the

landing that was slightly raised above the level of the concrete. The claimant and a co-worker both testified that the claimant caught the heel of her shoe on that strip immediately before she fell. Therefore, in the case at bar, unlike *First Cash Financial Services*, there was evidence to explain why the claimant fell. Additionally, the evidence was undisputed that the stairway where the claimant fell was part of the route she and her co-workers regularly took in order to attend mandatory meetings but that the general public's access to that stairway was limited. From that evidence, it was reasonable for the Commission to determine that the claimant was exposed to a risk greater than that of the general public. See also *Metropolitan Water Reclamation District*, 407 Ill. App. 3d at 1015, 944 N.E.2d at 804-05 (where the claimant was found to be exposed to a greater risk of tripping and falling than the general public when she fell and injured herself while walking across a six-inch dip in a commercial driveway on her regular trips to make bank deposits for her employer), and *Tinley Park Hotel and Convention Center v. Industrial Comm'n*, 356 Ill. App. 3d 833, 835, 826 N.E.2d 1043, 1044-45 (2005) (where the claimant's injury was found to be compensable based on evidence that she caught her foot on newly installed carpeting that she was regularly required to walk across in her job as a hostess/waitress). Since the Commission's decision is supported by the evidence, it must be affirmed.

¶ 36 CONCLUSION

¶ 37 The circuit court's order confirming the Commission's decision is affirmed.

¶ 38 Affirmed.