2014 IL App (4th) 130418WC-U
No. 4-13-0418WC
Order filed June 25, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JOAN ANDEREGG,	)	Appeal from the Circuit Court
	)	of Vermilion County.
Appellant,	)	
	)	
v.	)	No. 12-MR-202
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, et al.,	)	
	)	Honorable,
(Kesler, Garman, Brougher &	)	Derek J. Girton,
Townsley, P.C., Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman and Harris concurred in the judgment.
Justice Stewart dissented.

ORDER

¶ 1 *Held*: Commission's finding that claimant did not sustain an accident arising out of her employment is not against the manifest weight of the evidence where claimant failed to prove that the employer's premises were defective or that she was exposed to a common risk to a greater degree than the general public and she otherwise failed to establish that she was engaged in an activity in furtherance of her employer's business at the time of the accident.

¶ 2 Claimant, Joan Anderegg, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) alleging an injury to her right arm on July 11, 2011, while working for respondent, Kesler, Garman, Brougher & Townsley, P.C. The claim proceeded to an expedited arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)). The arbitrator found that claimant did not sustain an accident arising out of her employment with respondent. The Illinois Workers' Compensation Commission (Commission) adopted the arbitrator's decision and affirmed. The circuit court of Vermilion County confirmed the decision of the Commission. Thereafter, claimant filed a timely appeal. For the reasons set forth below, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on December 20, 2012. Respondent operates a law firm located in Danville, Illinois. Claimant worked for respondent as a legal secretary for more than 25 years. Claimant testified that it was customary for the law firm's staff to celebrate birthdays and other occasions by bringing in items to eat such as baked goods. Claimant further testified that on July 11, 2011, an individual was returning to employment at the law firm after a short absence. Claimant made a buttermilk pie and cheeseburger biscuits for the occasion. Claimant transported the baked goods to the office in two plastic containers. Claimant acknowledged that it was her decision to bring the pie and biscuits to work and that no one required her to bring in the food.

¶ 5 Claimant testified that on the morning of July 11, 2011, she parked in the employee parking lot and entered the office through one of the employee entrances at the back of the building. Claimant noted that the employee entrance is kept locked and the general public enters through a door at the front of the building. Claimant explained that upon entering the building,

there is a landing followed by some stairs. Claimant was carrying her purse and the two plastic containers filled with the baked goods. The plastic containers were stacked on top of each other. Claimant testified that as she approached the landing, the top container started to slide off the other container. Claimant testified that when she reached for the top container, she lost her balance, caught her toe on a metal strip at the top of the stairs, and fell. Claimant hit her head on the wall and landed on her stomach with her right arm underneath her. No one witnessed the accident.

¶ 6 Claimant testified that she immediately noticed pain in her right arm. William Townsley, an attorney at the law firm, helped claimant to a sitting position. Claimant told Townsley that she thought she broke her arm. Townsley examined claimant's arm and agreed with her assessment. An ambulance transported claimant to the emergency room. Medical records admitted into evidence reveal that claimant sustained a comminuted displaced fracture of her right humerus. At the time of the fall, claimant was 81 years old.

¶ 7 Claimant testified that she is right handed. She stated that she cannot cook because she is unable to handle the pots and pans. During her testimony, claimant was asked to raise her right arm. Claimant could only lift her right arm to chest level. Claimant testified that she has not had surgery on her arm because her doctor deemed it too risky.

¶ 8 On cross-examination claimant was asked if she was already falling when she hit her toe on the strip. She responded that she did not know, but admitted that she had not had any problems with the stairway in the past. Claimant also acknowledged that she was not carrying any work-related materials at the time she fell.

¶ 9 Townsley testified that the metal strip at the edge of the landing at the top of the stairs was, to his knowledge, neither defective nor raised. Townsley also stated that the metal strip

does not interfere with a person's ability to walk on the landing or descend the stairs. Townsley noted that claimant never told him that she caught her toe on the strip as she fell or that the strip in any way contributed to her fall. On cross-examination, Townsley acknowledged that he did not know the specifics about claimant's fall because he did not witness it.

¶ 10 Based on the foregoing evidence, the arbitrator held that claimant did not sustain an accident arising out of her employment with respondent. The arbitrator found that claimant chose to take baked goods to respondent's office and that she was not directed to prepare or bring the baked goods. The arbitrator found that the testimony illustrated that claimant lost her balance and began to fall as she attempted to catch a container as it slid off another container. The arbitrator noted that although claimant testified that her toe struck the metal strip at the end of the landing, there was no evidence that the metal strip was defective or that the stairway or the metal strip created an increased risk beyond that to which the general public is exposed. The Commission affirmed and adopted the arbitrator's decision. Thereafter, claimant sought judicial review of the Commission's decision in the circuit court of Vermilion County. The circuit court confirmed the Commission's decision. Claimant now appeals.

¶ 11 II. ANALYSIS

¶ 12 Claimant argues that the Commission erred in finding that she did not sustain a compensable accident on July 11, 2011. A claimant bears the burden of proving by a preponderance of the evidence that her injury "arose out of" and "in the course of" employment. 820 ILCS 305/2 (West 2010); *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). Both elements must be present to justify compensation. *First Cash Financial Services*, 367 Ill. App. 3d at 105.

¶ 13 The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Accidental injuries sustained on an employer's premises within a reasonable time before and after work are generally deemed to arise in the course of one's employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57 (1989). In this case, respondent does not dispute that claimant's injury occurred in the course of her employment. Indeed, claimant's injuries occurred on respondent's premises just after claimant entered the workplace. Accordingly, we will focus our analysis on whether claimant's injury arose out of her employment.

¶ 14 As a general rule, the question of whether an employee's injury "arose out of" her employment is one of fact. See *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). A reviewing court will not disturb the Commission's determination on a factual matter unless it is against the manifest weight of the evidence. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120411WC, ¶ 15. Claimant, however, urges us to conduct *de novo* review of the Commission's decision because "neither party disputes the facts of the case, and only one inference from the facts can be made." We agree that *de novo* review applies if the facts are undisputed and susceptible to only a single reasonable inference. *First Cash Financial Services*, 367 Ill. App. 3d at 104-05. However, where more than one reasonable inference may be drawn from the undisputed facts, the manifest weight standard applies. *Mlynarczyk*, 2013 IL App (3d) 120411WC, ¶ 15. In this case, although the material facts are undisputed, we do not find that only a single inference may be drawn regarding whether claimant's injury arose out of her employment. See *Oldham v. Industrial Comm'n*, 139 Ill. App. 3d 594, 596 (1985) (noting that where conflicting inferences regarding the cause of a fall exist, the manifest-weight-of-the-

evidence standard of review applies). Accordingly, we will apply the manifest weight of the evidence standard. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 15 For an injury to "arise out of" one's 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.*, 129 Ill. 2d at 58. A risk is incidental to one's employment when it is connected to what the employee has to do in fulfilling her duties. *Autumn Accolade v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d) 120588WC, ¶ 17. To determine whether an employee's injury "arose out of" her employment, we first categorize the risk to which she was exposed. *First Cash Financial Services*, 367 Ill. App. 3d at 105. Illinois courts categorize the risks to which an employee may be exposed into three general groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks that have no particular employment or personal characteristics. *Baldwin*, 409 Ill. App. 3d at 478; *First Cash Financial Services*, 367 Ill. App. 3d at 105; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162.

¶ 16 Employment risks are those that are inherent in one's employment. *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352 (Rakowski, J., specially concurring). Employment risks, which include the obvious kinds of industrial injuries and occupational diseases, are universally compensated. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162; *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352 (Rakowski, J., specially concurring). In the context of falls, employment risks include tripping on a defect at the employer's premises or falling on uneven or slippery

ground at a worksite. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). In this case, claimant fell while traversing stairs. There is no evidence that the risk of this type of injury is distinctly associated with claimant's employment as a legal secretary. Additionally, there was no evidence that claimant's fall resulted from a defect on respondent's premises. As such, we are not presented with an employment risk. Personal risks include exposure to elements that cause nonoccupational diseases and personal defects or weaknesses. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring); see also *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. For example, falls due to a bad knee or an episode of dizziness fall into the personal-risk category. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63; *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). Although generally noncompensable, personal risks may be compensable where conditions of the employment increase the risk of injury. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163, n.1. In this case, there was no evidence of record to suggest that any nonoccupational disease, personal defect or weakness contributed to claimant's fall. Accordingly, this case does not involve a personal risk.

¶ 17 Having eliminated the first two types of risks, it necessarily follows that claimant's fall is properly categorized as resulting from a neutral risk. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring) ("In the context of falls, neutral risks include falls on level ground or while traversing stairs."). Injuries from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill.

App. 3d 1010, 1014 (2011). "The increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 117 (2007).

¶ 18 Applying the foregoing authority to the facts in this case, we conclude that the Commission's finding that claimant failed to prove that her injury arose out of her employment is not against the manifest weight of the evidence. Claimant presented no evidence that she was exposed to a common risk more frequently than the general public. For instance, there was no evidence that respondent's premises were defective or that the metal strip upon which claimant allegedly caught her toe otherwise interfered with one's ability to traverse the area where claimant fell. Moreover, although it was customary for employees to bring in food to celebrate special occasions, claimant readily admitted that she was not carrying any work-related items at the time of the fall, that it was her decision to bring in the baked goods, and that no one required her to bring in the food. In other words, the items that claimant was carrying at the time of her fall were not required by her employment and were brought to work solely on her own volition. Thus, there was no connection between claimant's employment and her activities at the time of her fall. Accordingly, we find that a conclusion opposite that of the Commission is not clearly apparent and we conclude that the Commission's finding that claimant failed to establish that her accident arose out of her employment with respondent is not against the manifest weight of the evidence.

¶ 19 Claimant nevertheless argues that an opposite result is dictated by *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880 (2000). In that case, the claimant was required by her employer to attend a cardiopulmonary resuscitation (CPR) class immediately following her shift.

The class was held on the employer's premises but at a different building than the site where the claimant usually worked. Because there was no time between her shift and the class, the claimant stopped at a restaurant and purchased a sandwich and a soft drink to eat at the class. After attending the class for 10 to 15 minutes, the claimant was told she could leave. As the claimant was leaving, she fell down the stairs. At the time of her fall, the claimant was holding the soft drink she had purchased in one hand and her purse in the other hand. Claimant noted that although she usually leaves her purse in the car, she took the purse with her on the subject date to hold paper and a pen that she needed for the CPR class. As a result of the fall, the claimant ruptured her left quadriceps tendon. The Commission concluded that the claimant's fall arose out of her employment. This court affirmed. *Knox County YMCA*, 311 Ill. App. 3d at 885-86. In so holding, we acknowledged that there was no evidence that the stairs were defective, that the stairway was poorly lit, or that there was anything on the stairs that caused the claimant to fall. *Knox County YMCA*, 311 Ill. App. 3d at 885. We also acknowledged that the act of descending a staircase at an employer's place of business does not establish a risk greater than that faced by the general public. *Knox County YMCA*, 311 Ill. App. 3d at 885. However, we concluded that the presence of the soft drink in one hand and the purse in the other hand, both of which the claimant would not have had absent the mandatory CPR class, increased the risk to the claimant. *Knox County YMCA*, 311 Ill. App. 3d at 885.

¶ 20 Claimant insists that the facts in this case are analogous to those in *Knox County YMCA*. Notably, claimant emphasizes that it was customary for respondent's staff to bring food to work on special occasions. She maintains that the baked goods benefitted all of her coworkers and that she would not have been carrying the plastic containers with the baked goods absent her employment. Thus, claimant reasons, "the plastic containers *** [were] sufficiently related to

[her] employment in order to establish the requisite increased risk of injury." We disagree. In *Knox County YMCA*, the claimant was performing a task required by her employer and was carrying items specifically for work. In other words, in *Knox County YMCA*, the mandatory nature of the CPR class coupled with the lack of time provided between the end of the claimant's normal work day and the CPR class rendered her actions at the time of the accident related to her employment. Claimant fails to cite any similar circumstances here. Indeed, she acknowledged that she was not required to bring in the baked goods she was carrying at the time of her fall.

¶ 21 Claimant also directs us to *Panagos v. Industrial Comm'n*, 171 Ill. App. 3d 12 (1988), and *Lubin Management Co. v. Industrial Comm'n*, 200 Ill. App. 3d 432 (1990), for the proposition that an employee's injury will be deemed to arise out of the employment where the employer tacitly approves the employee's actions. In *Panagos*, the claimant worked as a professional belly dancer. Between performances, she was expected by her employer to socialize with customers. Although the employer denied it, claimant testified that her employer encouraged her to drink alcohol purchased by patrons at the employer's facility. The profit from the sales of alcohol went to the employer. On the night of the accident, the claimant was required to perform two 20-minute dance shows and to socialize with customers before, during, and after dancing. While socializing with the patrons, the claimant drank alcohol and the employer had knowledge of it. The claimant left work at 4 a.m. and was involved in an automobile accident. The Commission found that the claimant's injuries arose out of her employment, but the trial court reversed. This court held that the Commission could properly find that the accident arose out of the claimant's employment by virtue of the fact that the claimant had been drinking liquor prior to the accident with the employer's tacit approval. *Panagos*, 171 Ill. App. 3d at 15-16. We noted that the beverages the claimant drank while

socializing were paid for by the customers with the profit going exclusively to the employer. *Panagos*, 171 Ill. App. 3d at 16. As a result, we reversed the judgment of the trial court and reinstated the decision of the Commission. *Panagos*, 171 Ill. App. 3d at 16.

¶ 22 In *Lubin Management Co.*, the claimant worked as a resident maintenance manager of an apartment complex owned by the respondent. One evening, the claimant received a telephone call from a tenant's son requesting a ride because his car had broken down. While driving the individual back to the apartment complex, the claimant was forced to drive off the road to avoid an oncoming car. The car hit a boulder and landed in a ditch, injuring the claimant. The claimant testified that he had previously provided off-site assistance to tenants of the apartment complex. He further testified that the respondent's president was aware that he was offering off-site assistance, and while he was not given express permission, he had not been prohibited from doing so. A rental agent testified that the claimant's activities helped promote a good relationship with the tenants. Based on this evidence, the Commission concluded that the claimant sustained accidental injuries arising out of and in the course of his employment. On appeal, this court found that the only issue was whether the activities in which the claimant was engaged when he was injured were part of his job duties. *Lubin Management Co.*, 200 Ill. App. 3d at 436. In affirming the Commission, we concluded that the respondent's knowledge and implied approval of the claimant's activities made his off-site assistance to tenants a risk of employment. *Lubin Management Co.*, 200 Ill. App. 3d at 435-36.

¶ 23 Claimant notes that respondent had prior knowledge that its employees celebrated birthdays and other special occasions by bringing in food to share. Thus, she reasons, like the employer in *Panagos* and *Lubin Management Co.*, respondent gave tacit approval for her actions. Claimant further argues that like the employers in both of those cases, respondent derived a

benefit from employees bringing in food to celebrate special occasions, *i.e.*, maintaining good relationships among respondent's co-workers. We find both *Panagos* and *Lubin Management Co.* distinguishable. In *Panagos*, there was evidence that the employer profited monetarily by the claimant's actions because the beverages the claimant drank while socializing were paid for by customers. *Panagos*, 171 Ill. App. 3d at 16. Similarly, in *Lubin Management Co.*, there was testimony that the claimant's directly benefited the apartment complex by establishing good relations with tenants. In contrast, although claimant asserts that bringing in food to celebrate special occasions helps maintain good relationships among her co-workers at the law firm, she presented no evidence at the arbitration hearing to support this theory. Stated differently, unlike *Panagos* and *Lubin Management Co.*, there was no evidence in this case that the activity in which claimant was engaged at the time of her accident was in furtherance of respondent's business either directly or indirectly. As such, neither case supports claimant's argument for reversal.

¶ 24 III. CONCLUSION

¶ 25 For the reasons set forth above, we affirm the judgment of the circuit court of Vermilion County, which confirmed the decision of the Commission denying claimant benefits under the Act.

¶ 26 Affirmed.

¶ 27 JUSTICE STEWART, dissenting:

¶ 28 I respectfully dissent because I disagree with the majority's conclusion that "there was no connection between claimant's employment and her activities at the time of her fall." The evidence is undisputed that the 81 year old claimant, who had worked for the employer for 25 years, fell trying to carry containers of baked goods she had prepared to help celebrate the return of a co-worker. The claimant's testimony was uncontradicted that it was customary for the law firm's staff to bring food to the office for such events. Although no one was required to bring food, it was certainly allowed. In my view, because the employer had knowledge of and acquiesced in this long term practice and custom, the claimant's actions were incidental to her employment.

¶ 29 The office celebrations were not purely personal, they were also business related. Office celebrations boost office morale, build employee engagement, foster a sense of appreciation, rejuvenate office energy, and increase productivity. All of these are a benefit to the employer. Thus, the act of bringing baked goods for an office celebration has both a personal and a business purpose. When a claimant, as in this case, is carrying items of both a personal and business purpose, and the items increase her risk of falling, her injuries arise out of her employment. See *Knox County YMCA v. Industrial Comm'n.*, 311 Ill. App. 3d 880, 725 N.E.2d 759 (2000).

¶ 30 Accordingly, I would reverse the decision of the Commission and remand for further proceedings.