*389 Ill. 592, *; 60 N.E.2d 212, **;*
*1945 Ill. LEXIS 512, ****

The **City** of **Chicago,** Plaintiff in Error, v. The Industrial Commission et al. -- (Edward Homan, Defendant in Error)

No. 28300

Supreme Court of Illinois

389 Ill. 592; 60 N.E.2d 212; **1945** Ill. LEXIS 512

March 21, **1945**, Filed

PRIOR HISTORY: [*1]** Writ of Error to the Circuit Court of Cook county; the Hon. John Prystalski, Judge, Presiding.

DISPOSITION: Judgment affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff in error **city** challenged a judgment from the Circuit Court of Cook County (Illinois), which confirmed an allowance of **compensation** by defendant in error, the Industrial Commission of Illinois, in connection with a request for benefits by defendant in error claimant, a **city** employee, when his leg was amputated above the knee.

OVERVIEW: The amputation of the claimant's leg resulted from an injury sustained when he stubbed his toe in stepping up to a sidewalk while traveling on his way to conduct his duties as a license investigator. At issue was whether the claimant's injury arose out of his employment. The question was whether the injury resulted from what was commonly designated a street risk to which everyone was subject, or grew out of his employment because it was inseparably connected with his work. The court held that when the proof established that an employee's work required him to be on the street to perform the duties of his employment, the risks of the street became one of a risk of employment, and an injury suffered on the street while performing his duty had a causal relation to his employment, authorizing an award under Illinois' Workmen's **Compensation** Act. Applying that rule, the court found that the claimant, by traveling from place to place upon the streets to investigate those who were required to hold licenses, was exposed to risks of accidents in

the street to a greater degree than if he had not been so employed. Thus, he came clearly within the rule allowing for an award of benefits.

OUTCOME: The court affirmed the judgment.

CORE TERMS: street, hazard, causal, exposed, public street, causal connection, traveling, particles, workmen, air, Compensation Act, injury arose, number of cases, connected, telephone, peculiar, traced, performing, license, injury resulted, case involving, employer's business, public place, general public, investigator, contributing, inseparably, intensified, compelled, streetcar

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Workers' Compensation & SSDI > Compensability > Injuries > General Overview

HN1 Most of the early cases hold that for an injury to arise out of employment the causative danger must be peculiar to the work and not common to the neighborhood, and therefore it has been held that injuries occurring upon the street, while transacting business of the employer, do not arise out of employment within the operation of Illinois' Workmen's **Compensation** Act. To that construction, however, there is an exception in the case of workmen whose duties required them to be continually in the streets, the court basing the exception upon the ground that it could be foreseen that their use of the streets involved a peculiar hazard from street perils. There can be no question, however, that the recent trend of the authorities moves towards a more liberal construction of the term "arising out of the employment," and perhaps a majority of the courts of different jurisdictions have modified the ordinary rule. Thus, it had been said that an accident arises out of the employment if it is a direct and natural result of a risk reasonably incident to the employment in which the injured person is engaged. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN2 The rule regarding whether an injury arose out of employment for purposes of workmen's **compensation** might be restated as follows: Is the injury one resulting from a hazard pertaining to and inseparably connected with the industry, or substantially increased by reason of the nature of the services which applicant is required to perform? It is not the nature of the hazard that is the determinative thing, but rather whether or not it is a usual or necessary incident to the employment. Many other jurisdictions have reached the same conclusion. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN3 The criterion for compensability under Illinois' Workmen's **Compensation** Act is not that other persons are exposed to the same danger, but rather that the employment renders the **workman** peculiarly subject to the danger. The question is, then, did the circumstances of the employment of the defendant in error require him to incur some special risk in using the street in the way he did? If so, no matter how slight, it cannot be said that no greater danger was imposed upon him than

upon an ordinary member of the public. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

Workers' Compensation & SSDI > Compensability > Injuries > General Overview

HN4 If an injury is caused by reason of some factor unrelated to the nature of the employment it cannot be said to arise out of the employment. The injury arises out of the employment when, upon consideration of all the circumstances, there is apparent to the rational mind a causal connection between the conditions under which the work is required to be performed and the resulting injury. The test will exclude an injury which cannot fairly be traced to the employment as a contributing, proximate cause and which comes from a hazard to which the employee would have been equally exposed apart from the employment. More Like This Headnote

Governments > State & Territorial Governments > Legislatures

Workers' Compensation & SSDI > Coverage > Employment Relationships > General Overview

HN5 It is for the lawmaking body to determine in the first instance what employers and employees shall be brought within the limits of Illinois' Workmen's **Compensation** Act. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

Workers' Compensation & SSDI > Compensability > Injuries > General Overview

HN6 The rule applicable in cases where there was supposed to be a risk common to employees and public alike does not apply if the employees, by reason of their employment, were exposed to an intensified or greater risk than the public, or if their employment necessarily intensified the general hazard of contracting the disease, and that if injury resulted, it was an accident arising out of the employment, although unexpected and unusual. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Awards > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN7 Where the proof establishes that the work of an employee requires him to be on the street to perform the duties of his employment, the risks of the street become one of the risks of the employment, and an injury suffered on the street while performing his duty has a causal relation to his employment, authorizing an award under Illinois' Workmen's **Compensation** Act. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: Barnet Hodes, Corporation Counsel, (J. Herzl Segal, and L. Louis Karton, of counsel,) all of **Chicago,** for plaintiff in error.

Orr, Vail, Lewis & Orr, and Irving M. Greenfield, (Loren E. Lewis, of counsel,) all of **Chicago,** for

defendant in error.

JUDGES: Mr. Justice Gunn delivered the opinion of the court.

OPINION BY: GUNN

OPINION

[*593] **[**213]** Mr. Justice Gunn delivered the opinion of the court:

The defendant in error, Edward Homan, was employed by the **city** of **Chicago** in the capacity of a license investigator. He worked in the loop district of **Chicago** from Washington to Van Buren streets, and from Clark street to Michigan avenue. It was his job to canvass all places of business and individuals in that district requiring a **city** license, and customarily he went from place to place walking the sidewalks. February 2, 1942, he had reported at the office for work, and was proceeding to his territory in the morning, going east on Jackson boulevard, and, after crossing Dearborn street, he stubbed his toe in stepping up to the sidewalk on the opposite side of **[***2]** the street. He did not fall down, nor lose his balance. He was within the territory in which he was supposed to work. At that time the subway was being constructed and the street was torn up, and the step up was said to be a little higher than usual. Homan, at the time, was afflicted with a diabetic condition.

Shortly after the accident Homan noticed pain, and quit before the workday was ended. The superior of his department was notified and a doctor called, who attended for several days. He went back to work on the eighteenth of the month, and worked until the latter part of March, when his foot commenced to again swell, and he went to the hospital, where his toe was lanced and a week later amputated. He remained in the hospital from March 31 until June 20, when he went home. He re-entered the hospital during the month of August and remained until September 4. On August 15 his leg was amputated several inches above the knee. **Compensation** was allowed by an arbitrator and the Industrial Commission, and confirmed on *certiorari* by the circuit court of Cook county.

The only question involved is whether Homan's injury arose *out* of his employment, there being no dispute **[***3]** that it did arise *in* the course of his employment. The point **[*594]** for determination is whether the injury resulted from what is commonly designated a street risk to which everyone is subject, or grew out of his employment because it was inseparably connected with his work.

HN1Most of the early cases hold that for an injury to arise out of employment the causative danger must be peculiar to the work and not common to the neighborhood, and therefore it was held that injuries occurring upon the street, while transacting business of the employer, do not arise out of employment within the operation of the Workmen's **Compensation** Act. (*McNicol's case,* 215 Mass. 497, L.R.A. 1916-A, 306, Notes 51 A.L.R. 511.) To this construction, however, there was an exception in the case of workmen whose duties required them to be continually in the streets, the court basing the exception upon the ground that it could be foreseen that their use of the streets involved a peculiar hazard from street perils. There can be no question, however, that the recent trend of the authorities moves towards a more liberal construction of the term "arising out of the employment," and perhaps a majority **[***4]** of the courts of different **[**214]** jurisdictions have modified the ordinary rule. Thus, in *Palmer* v. *Main,* 209 Ky. 226, 272 S.W. 736, it is said that an accident arises out of the employment if it is a direct and natural result of a risk reasonably incident to the employment in which the injured person is engaged. And in *Schroeder & D. Co.* v. *Industrial Com.* 169 Wis. 567, 173 N.W. 328, in discussing the claim of a salesman who had slipped on a public street and injured his leg, the court said that ***HN2***the rule might be restated as follows: "Is the injury one resulting from a hazard pertaining to and inseparably connected with the industry, or

substantially increased by reason of the nature of the services which applicant is required to perform? It is not the nature of the hazard that is the determinative thing, but rather whether or not it is a usual or necessary incident to the **[*595]** employment." Many other jurisdictions have reached the same conclusion. Notes 51 A.L.R. 514.

It is urged by plaintiff in error that the rule in all of its strictness has been adopted in Illinois, and in support of its position it cites a number of cases, including ***City** of* **[***5]** ***Chicago*** v. *Industrial Com.* 376 Ill. 207; *Great American Indemnity Co.* v. *Industrial Com.* 367 Ill. 241; *Farley* v. *Industrial Com.* 378 Ill. 234, and *Mueller Construction Co.* v. *Industrial Board,* 283 Ill. 148. To support the award defendant in error says the liberal rule is in force in this State, and cites *Mueller Construction Co.* v. *Industrial Board,* 283 Ill. 148; *Illinois Publishing Co.* v. *Industrial Com.* 299 Ill. 189; *Permanent Construction Co.* v. *Industrial Com.* 380 Ill. 47, and *Puttkammer* v. *Industrial Com.* 371 Ill. 497. These two lines of cases seem in some respects to be in conflict, but may, upon critical analysis, be reconciled.

The first case called to our attention involving the street-risk doctrine is that of *Mueller Construction Co.* v. *Industrial Board,* 283 Ill. 148. In that case an award was sustained where a man had been injured crossing a street to telephone for supplies needed by his employer in the course of its business. The court cited a number of cases from other jurisdictions, some of which allowed recovery and some of which did not. The oft-repeated test is set out in that case as follows: **[***6]** ***HN3***"The criterion, however, is not that other persons are exposed to the same danger, but rather that the employment renders the **workman** peculiarly subject to the danger. The question is, then, did the circumstances of the employment of the defendant in error require him to incur some special risk in using the street in the way he did? If so, no matter how slight, it cannot be said that no greater danger was imposed upon him than upon an ordinary member of the public. Under the decisions, if the plaintiff in error had employed a messenger **[*596]** to run errands for the foreman in charge of the work on the cathedral, to answer telephone calls and send messages by telephone, there could be no question but that he could recover if he were injured in the same manner that the defendant in error was injured." This case has been cited many times in later decisions, and so far as we can ascertain has never been specifically overruled.

It is said, however, that the effect of *Great American Indemnity Co.* v. *Industrial Com.* 367 Ill. 241, and ***City** of* ***Chicago*** v. *Industrial Com.* 376 Ill. 207, is to overrule this case, or, at least, to modify it to the extent that a person injured **[***7]** in the streets when doing something incidental to the business of his employer is not entitled to **compensation.** In the ***City** of* ***Chicago** case* the employee worked for the election commission of the **city.** His business was to work in an office. There was a contention made he had been appointed an investigator, whose duty it was to use the streets in making such investigations. This was denied by the **city,** and in the opinion it is said that the records of the commission disclosed no assignment of the deceased to do outside work. The opinion states that the mere fact that the employee may have sustained a blister while canvassing is not decisive. Its conclusion is that the record failed to disclose sufficient facts or circumstances whereby a causal connection can be traced between his employment and his alleged accident. If no sufficient proof was made that he worked in the streets, the conclusion was in accord with previous cases. The *Mueller case* is cited, but there is no indication that the rule set out in that case is overruled. The judgment of this court **[**215]** is based upon the fact that there was not sufficient evidence to connect the injury with the employee **[***8]** and, consequently, no right to recovery. In the case of *Great American Indemnity Co.* v. *Industrial Com.* 367 Ill. 241, the employee went to one of the courts on business of his employer, and while returning got a foreign substance in his eye, as the result **[*597]** of which he finally lost the eye. The *Mueller case* is cited several times in the course of the opinion and not overruled, but simply held to be inapplicable to the facts. In holding that no **compensation** could be awarded, the floating of foreign bodies and particles in the air was likened unto the action of the elements, for which no **compensation** could be awarded, and the award was set aside because the claimant had not sustained the burden of showing a causal relation between his employment and the accident.

The case of *Farley* v. *Industrial Com.* 378 Ill. 234, has no bearing upon the question involved. There, an employee for a considerable period of time had been in the habit of taking papers and small change to his home in the evening and carrying them back to the office in the morning. It was no part of his employment time. In going to the office he fell upon the ice and was injured. It was **[***9]** at once apparent there was no connection between the slipping on the ice and the carrying of the package of papers, because in either event he would have been compelled to walk upon the same street, at the same time, whether he carried anything or not.

The late case of *Cummings* v. *Industrial Com. ante,* p. 356, is another case involving injuries to an eye from particles floating in the air, and it was held the employee had failed to prove the accident had its origin in some risk connected with the employment, because particles in the air were a risk to which the general public is subject.

A review of many cases involving principles similar to the contentions made by the parties to this suit is to be found in *Borgeson* v. *Industrial Com.* 368 Ill. 188. A traveling salesman driving down the street in his automobile was injured by a bullet fired by a colored man, directed at another colored person. In holding the injury did not arise out of employment, the court called attention to the cases of **[*598]** *Irwin-Neisler & Co.* v. *Industrial Com.* 346 Ill. 89, *Porter Co.* v. *Industrial Com.* 301 Ill. 76, **[***10]** *Solar-Sturges Mfg. Co.* v. *Industrial Com.* 315 Ill. 352, *Illinois Publishing Co.* v. *Industrial Com.* 299 Ill. 189, *Pressed Steel Car Co.* v. *Industrial Com,* 340 Ill. 68, and *Porter* v. *Industrial Com.* 352 Ill. 392, all of which involved the awarding of **compensation** for injuries sustained, by collision, while on the street or in a public place, or while boarding a streetcar, or traveling on behalf of the employer in the course of the employment. In the *Borgeson case* we found that in each of these cases there was a causal connection or relation between the injury and the nature of the employment, and that the injury arose out of the employment. The cases of *Spiller* v. *Industrial Com.* 331 Ill. 401, *Jones Foundry Co.* v. *Industrial Com.* 312 Ill. 27, *Sure Pure Ice Co.* v. *Industrial Com.* 320 Ill. 332, *Jersey Ice Cream Co.* v. *Industrial Com.* 309 Ill. 187, and ***City** of **Chicago*** v. *Industrial Com.* 292 Ill. 406, where the employee was shot either accidentally or by mistake or intentionally, either by a fellow worker or by a stranger, are also cited, and in each case no **compensation** was allowed. The *Borgeson case* holds that **compensation** was denied in the shooting cases because **[***11]** the injuries sustained did not have their origin in any risk peculiar to the employment, and therefore there was no causal relation between the character of the employment and the injury.

What, then, is meant by the term causal relation between the injury and the nature of the employment, which includes or excludes an employee from the benefit of the Workmen's **Compensation** Act? The test set out in the *Borgeson case* is: HN4"If the injury is caused by reason of some factor unrelated to the nature of the employment it cannot be said to arise out of the employment. The injury arises out of the employment when, upon consideration of all the circumstances, there is apparent to the rational mind a causal connection between the conditions under **[*599]** which the work is required to be performed and the resulting injury. This test would exclude an injury which cannot fairly be traced to the employment as a contributing, proximate cause and which comes from a hazard to which the **[**216]** employee would have been equally exposed apart from the employment."

In the case of *Illinois Publishing Co.* v. *Industrial Com.* 299 Ill. 189, where an advertising solicitor was going to see **[***12]** a prospective customer, we said: HN5"It is for the lawmaking body to determine in the first instance what employers and employees shall be brought within the limits of the act, and we are not prepared to say that there is not some basis for including within its provisions solicitors and salesmen whose work is largely outside the plant. These employees, because of the nature of their business, are compelled to expose themselves to the hazards of the street and to the hazards of automobile and railroad transportation much more than the general public. In the case at bar it was the business of the employer that brought deceased to the place where he was killed, and the work in which he was engaged was just as essential to the operation of the employer's business as the work of the linotype operator or the pressman." In the *Borgeson case* the award was set aside because

the injury by a bullet fired in a quarrel between two strangers could not be traced to the employment as a contributing cause, but cases allowing awards for injuries sustained by employees in traveling over the public streets were approved because the injuries arose out of the employment and had a causal connection with **[***13]** such employment.

We do not deem the case of *Puttkammer* v. *Industrial Com.* 371 Ill. 497, relevant to the point under consideration, as there the sole question was whether the employee broke the thread of his employment when, while aiding an injured child in the street, he was himself killed. The **[*600]** only question involved was what constituted a departure from the course of the employment.

The case of *Permanent Construction Co.* v. *Industrial Com.* 380 Ill. 47, has some bearing upon the present situation. In that case a number of employees of a construction company contracted typhoid fever from infected water, which was used not only by the inmates of an asylum and surrounding community, but by the employees as well. We there held that HN6 the rule applicable in cases where there was supposed to be a risk common to employees and public alike did not apply if the employees, by reason of their employment, were exposed to an intensified or greater risk than the public, or if their employment necessarily intensified the general hazard of contracting the disease, and that if injury resulted, it was an accident arising out of the employment, although unexpected and unusual. **[***14]**

We are of the opinion that the rule announced in the *Mueller Construction Co. case* has not been departed from. In several of the cases in which a different result was reached, such result was required by the facts, which failed to bring them within the rule in that case. We have seen, from what is said above, that awards have been sustained in a number of cases where the street risks were present at the time of the injury. We also find that this court has held that in many cases an injury in the public streets had a causal relation to the risks of the employment, and arose out of the employment, warranting an award. We have also held that injuries through causes which cannot be avoided or guarded against, such as actions of the elements, and things likened unto actions of the elements, like dust particles in the air, or acts of God, such as cyclone or lightning, have no causal relation to the employment, because everyone alike suffers the risk.

In the *Borgeson case,* in commenting upon the instances in which awards had been allowed for employees injured on the public streets, we said: "It is manifest from an **[*601]** examination of each of the above cases that the injury **[***15]** not only had its origin in the nature of the employment but was the direct result of the risks to which the injured employee, by reason of the nature and incidents of his employment, was exposed to a greater degree than if he had not been so employed." We can see little distinction between riding in an automobile or a streetcar in the course of the employer's business and suffering an injury while walking upon the streets or public places of a **city** performing the same duties. If an essential part of one's employment requires part-time use of the street in performing his duties, the risk is lesser in degree only than that of spending all of his time.

The rationale to be deduced from all the cases is that the risks of the street may, depending upon the circumstances, become risks of the employment. HN7 Where, therefore, the proof establishes that the work of the employee requires him to be on the street to perform the duties of his employment, **[**217]** the risks of the street become one of the risks of the employment, and an injury suffered on the street while performing his duty has a causal relation to his employment, authorizing an award under the Workmen's **Compensation** Act. Applying **[***16]** such rule to the present case it seems that defendant in error, by traveling from place to place upon the streets to investigate those who were required to hold licenses, was exposed to risks of accidents in the street to a greater degree than if he had not been so employed. In such case, he comes clearly within the rule laid down in the *Mueller case,* the *Permanent Construction Co. case,* and the *Borgeson case,* and was entitled to an award.

The judgment of the circuit court of Cook county is accordingly affirmed.

Judgment affirmed.

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*129 Ill. 2d 52, *; 541 N.E.2d 665, **;*
*1989 Ill. LEXIS 85, ***; 133 Ill. Dec. 454*

CATERPILLAR TRACTOR COMPANY, Appellant, v. THE INDUSTRIAL COMMISSION et al. (Thomas Price, Appellee)

No. 67183

Supreme Court of Illinois

129 Ill. 2d 52; 541 N.E.2d 665; 1989 Ill. LEXIS 85; 133 Ill. Dec. 454

June 19, 1989, Filed

PRIOR HISTORY: **[***1]** Appeal from the Industrial Commission Division of the Appellate Court; heard in that court on appeal from the Circuit Court of Peoria County, the Hon. Robert E. Manning, Judge, presiding.

DISPOSITION: Judgments reversed; award set aside.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant employer appealed from the holding of the Industrial Commission Division of the Appellate Court (Illinois), which affirmed the holding of the lower court finding the employer liable for plaintiff employee's injury.

OVERVIEW: The employee was injured when he stepped off a curb in front of his place of employment. An arbitrator denied his claim for compensation, finding that he had failed to prove that the injury arose out of and in the course of his employment. The Industrial Commission reversed, and the circuit court affirmed the judgment finding the employer liable. The appellate court affirmed. The employer appealed and the court reversed and set aside the judgment. The court held that because there was nothing in the record to indicate that the curb was either defective or hazardous, a conclusion that the injury was caused by the slope was not supported by the record and was no more than mere speculation. The court held that the employee had the burden of establishing, by a preponderance of the evidence, some causal relation between his employment and the injury. The court was not prepared to adopt the position that whenever an injury was suffered on work premises during work hours it was compensable, regardless of whether the conditions or nature of the employment increased or contributed to the risk that led to the injury.

OUTCOME: The court reversed and set aside the judgment of the lower court, which affirmed the finding that the employer was liable for the employee's injury.

CORE TERMS: claimant's, curb, general public, employer's premises, exposed, parking lot, driveway, compensable, slope, stepped, accidental injuries, arbitrator's, connected, blacktop, ankle, injury arose, incidental, customary, slight, causal, height, route, ledge, pavement, cement, failed to prove, reasonable inference, reasonable time, undisputed facts, speculation

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Torts > Negligence > Causation > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN1 In order for an injury to be compensable under the Workers' Compensation Act, the injury must arise out of and in the course of the employment. Ill. Rev. Stat. ch. 48, para. 138.2 (1987). The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. 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 the employment. However, the fact that an injury arises in the course of the employment is not sufficient to impose liability; to be compensable, the injury must also "arise out of" the employment. 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. Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN2 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. However, if the injury results from a hazard to which the employee would have been equally exposed apart from the employment, or a risk personal to the employee, it is not compensable. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Hearings & Review

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN3 If undisputed facts upon any issue permit more than one reasonable inference, the determination of such issues presents a question of fact, and the conclusion of the Industrial Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence. However, if the undisputed facts are susceptible of but a single inference, then the issue becomes one of law and the Commission's

decision is in no way binding upon this court. Liability for workers' compensation cannot rest on imagination, speculation or conjecture, but must be based solely upon the facts contained in the record. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN4 An injury is not compensable unless it is causally connected to the employment. Where liability has been imposed, the injury occurred either as a direct result of a hazardous condition on the employer's premises or arose from some risk connected with, or incidental to, the employment. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: Robert F. Fahey, of Peoria, for appellant.

Stephens, Schlicksup & Associates, P.C., of Peoria (Gordon M. Fiddes, of counsel), for appellee.

JUDGES: JUSTICE CLARK delivered the opinion of the court. JUSTICE CALVO took no part in the consideration or decision of this case.

OPINION BY: CLARK

OPINION

[666]** **[*56]** Claimant, Thomas Price, was injured when he stepped off a curb onto the blacktop driveway in front of his place of employment. An arbitrator denied his claim for compensation, finding that he had failed to prove that the injury arose out of and in the course of his employment. The Industrial Commission reversed, and the circuit court confirmed the decision of the Industrial Commission finding the employer liable. The Industrial Commission division of the appellate court, with two judges dissenting, affirmed the circuit court. (170 Ill. App. 3d 148.) The appellate court declared, however, that the case involved a substantial question warranting consideration by this **[***2]** court, and Caterpillar Tractor Company filed a petition for leave to appeal pursuant to our Rule 315(a) (107 Ill. 2d R. 315(a)). We granted review and reverse the judgment of the appellate court.

The facts in this case are not in dispute. At the time of the incident, Thomas Price was employed by the Caterpillar Tractor Company (Caterpillar) as a carton packer. On July 7, 1979, after completing his shift, Price left the building through the door normally used by the employees, intending to go to his car, which was parked in the employee parking lot. Immediately in front of the building was a sidewalk with a curb running along its edge. Price walked along the sidewalk for about 30 feet and then stepped off the curb onto the blacktop driveway. **[*57]** There was a slight cement slope, apparently for drainage, between the curb and the blacktop driveway. As Price stepped off the curb, his right foot landed half on the cement incline and half on the blacktop driveway and he twisted his ankle. The driveway was part of the company premises and was used both by employees and by the general public to pick up employees. There is no evidence of holes, rocks or obstructions on the pavement.

[*3]** Based on this evidence, the arbitrator found that Price had failed to prove that he sustained accidental injuries arising out of and in the course of his employment. The arbitrator

determined that stepping from the curb and twisting an ankle was not resultant from a risk peculiar to the employment of the claimant and that he was **[**667]** not exposed to a risk of injury greater than that to which the general public was exposed.

The Industrial Commission reversed the arbitrator's decision, finding that because Price had to step off the curb to get to the parking lot, his injury arose out of and in the course of his employment. Caterpillar contends that this decision is against the manifest weight of the evidence and urges this court to set aside the decision of the Industrial Commission.

We begin our analysis by recognizing that HN1 in order for an injury to be compensable under the Workers' Compensation Act, the injury must "arise out of" and "in the course of" the employment. (Ill. Rev. Stat. 1987, ch. 48, par. 138.2.) The phrase "in the course of" refers to the time, place and circumstances under which the accident occurred. (*Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38, 44.) **[***4]** This court has recognized that 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 the employment (see *Jones v. Industrial Comm'n* (1980), 78 Ill. 2d 284, 286; *Peel v. Industrial* **[*58]** *Comm'n* (1977), 66 Ill. 2d 257, 260) and Caterpillar does not dispute that point. However, the fact that the injury arose in the course of the employment is not sufficient to impose liability; to be compensable, the injury must also "arise out of" the employment. *Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38, 45; *Greene v. Industrial Comm'n* (1981), 87 Ill. 2d 1, 5.

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. (*Jewel Cos. v. Industrial Comm'n* (1974), 57 Ill. 2d 38, 40; *Chmelik v. Vana* (1964), 31 Ill. 2d 272, 277.) Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee **[***5]** was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. (*Howell Tractor & Equipment Co. v. Industrial Comm'n* (1980), 78 Ill. 2d 567, 573.) A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. *Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38, 45; *Fisher Body Division, General Motors Corp. v. Industrial Comm'n* (1968), 40 Ill. 2d 514, 516; see, *e.g., Peel v. Industrial Comm'n* (1977), 66 Ill. 2d 257 (claimant injured while pushing vehicle which was blocking entrance to parking lot); *Union Starch, Division of Miles Laboratories, Inc. v. Industrial Comm'n* (1974), 56 Ill. 2d 272 (claimant injured during break on employer's roof).

HN2 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. (*Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38, 45; **[***6]** see, *e.g., Chmelik v. Vana* (1964), 31 Ill. 2d 272, 278 **[*59]** (claimant injured during a mass exodus of vehicles at quitting time); *DeHoyos v. Industrial Comm'n* (1962), 26 Ill. 2d 110 (claimant fell on ice in employer's parking lot).) However, if the injury results from a hazard to which the employee would have been equally exposed apart from the employment, or a risk personal to the employee, it is not compensable. *Material Services Corp. v. Industrial Comm'n* (1973), 53 Ill. 2d 429, 433; see, *e.g., Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38 (claimant's automobile lurched forward, injuring claimant); *Branch v. Industrial Comm'n* (1983), 95 Ill. 2d 268 (claimant injured while removing his coat after arriving at work); *Greene v. Industrial Comm'n* (1981), 87 Ill. 2d 1 **[**668]** (claimant assaulted on employer's premises by unidentified assailant); *Jones v. Industrial Comm'n* (1980), 78 Ill. 2d 284 (claimant closed car door on his hand); *Fisher Body Division, General Motors Corp. v. Industrial Comm'n* (1968), 40 Ill. 2d 514 (claimant's **[***7]** car battery exploded).

In the instant case, Price contends, and the appellate court found, that the injury occurred both as the result of a condition on the employer's premises and because he was exposed to a greater degree of risk than the general public. The court noted that since there was evidence of a slight slope between the curb and the driveway, and since there was no evidence that the

claimant tripped or fainted, or that the fall was idiopathic in nature, the Commission could properly have inferred that the cause of claimant's injury was the existence of the slope. The court further held that since Price was required to step off the curb to reach his vehicle, and there is no such requirement of the general public, he was subjected to a risk not required of the general public. 170 Ill. App. 3d at 151-52.

We first consider whether the injury resulted from the condition of the employer's premises. We note that **[*60]** the Industrial Commission made no specific findings of fact as to this issue. Consequently, we must examine the record to determine whether the inference that the injury was caused by the slope is supported by the evidence. *State House Inn v. Industrial Comm'n* (1965), 32 Ill. 2d 160, 164.

[*8]** The evidence presented at the hearing established that the curb was seven to eight inches in height and that there was a slight cement slope, apparently for drainage, between the curb and the driveway. The claimant testified that at the time of the injury, the pavement was dry and there were no holes, obstructions or rocks on the pavement. He did not trip, slip or fall; he simply stepped off the curb and twisted his ankle. Based on these facts, and the fact that the injury was otherwise unexplained, the appellate court found that there was a reasonable basis for the Commission to infer that the condition of the premises was the cause of claimant's injury.

It is well settled that HN3 if undisputed facts upon any issue permit more than one reasonable inference, the determination of such issues presents a question of fact, and the conclusion of the Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence. (*Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38, 44; *Sears, Roebuck & Co. v. Industrial Comm'n* (1979), 78 Ill. 2d 231, 233.) However, if the undisputed facts are susceptible of but a single inference, **[***9]** then the issue becomes one of law (*Deal v. Industrial Comm'n* (1976), 65 Ill. 2d 234, 237; *Union Starch, Division of Miles Laboratories, Inc. v. Industrial Comm'n* (1974), 56 Ill. 2d 272, 275) and the Commission's decision is in no way binding upon this court (*Bommarito v. Industrial Comm'n* (1980), 82 Ill. 2d 191, 194; *Williams v. Industrial Comm'n* (1967), 38 Ill. 2d 593, 595).

[*61] In our opinion, the only reasonable inference which can be drawn from the evidence in the record is that the condition of the premises was not a contributing cause of Price's injury. Liability for workers' compensation cannot rest on imagination, speculation or conjecture, but must be based solely upon the facts contained in the record. (*Schroeder Iron Works v. Industrial Comm'n* (1967), 36 Ill. 2d 519, 523.) As there is nothing in the record to indicate that the curb was either defective or hazardous, a conclusion that the injury was caused by the slope is not supported by the record, and is no more than mere speculation.

We next consider whether the claimant was subjected to a greater degree of risk **[***10]** than the general public because of his employment. Price contends that he was exposed to a risk not common to the general public because he was regularly required to traverse the curb to reach his vehicle, **[**669]** and there was no such requirement for the general public.

Caterpillar maintains that the claimant has not established a causal connection between his employment and the injury, and the fact that the injury was sustained on his customary route does not satisfy the "arising out of" requirement. It argues that employers in Illinois are not insurers of the safety of their employees at all times, and to permit recovery simply because the employee was injured on his customary route would render employers absolutely liable for any injuries occurring on the employers' premises, regardless of cause.

We recognize that in prior cases this court held that injuries sustained on the employer's premises by an employee going to or from his actual employment by a customary or permitted way, within a reasonable time before or after work, were incurred in the course of and arose out of the employment. (See, *e.g., Peel v. Industrial Comm'n* (1977), 66 Ill. 2d 257, 259; *Deal v. Industrial* **[*62]** *Comm'n* (1976), 65 Ill. 2d 234, 238; **[***11]** *M&M Parking Co. v.*

Industrial Comm'n (1973), 55 Ill. 2d 252, 257; *Hiram Walker & Sons, Inc. v. Industrial Comm'n* (1968), 41 Ill. 2d 429, 430; *Chmelik v. Vana* (1964), 31 Ill. 2d 272, 279; *DeHoyos v. Industrial Comm'n* (1962), 26 Ill. 2d 110, 114.) While the broad language of these cases might appear to imply that *any* accidental injury sustained on the employer's premises is compensable, that is not the law in this State. An examination of the cases indicates this court's continued adherence to the maxim that HN4 an injury is not compensable unless it is causally connected to the employment. Where liability has been imposed, the injury occurred either as a direct result of a hazardous condition on the employer's premises (see, *e.g., Hiram Walker & Sons, Inc. v. Industrial Comm'n* (1968), 41 Ill. 2d 429; *DeHoyos v. Industrial Comm'n* (1962), 26 Ill. 2d 110 (cases in which claimants fell in employers' ice-covered parking lots)) or arose from some risk connected with, or incidental to, the employment (*Orsini v. Industrial Comm'n* (1987), 117 Ill. 2d 38, 48; **[***12]** see, *e.g., Peel v. Industrial Comm'n* (1977), 66 Ill. 2d 257 (claimant injured while pushing a vehicle which was blocking entrance to parking lot); *Chmelik v. Vana* (1964), 31 Ill. 2d 272 (claimant injured during a mass and speedy exodus of employees from the parking lot)).

Applying the aforementioned principles, we do not find that claimant has established that he was exposed to a risk not common to the general public. The object of comparing between the exposure of the particular employee to a risk and the exposure of the general public to the risk is to isolate and identify the distinctive characteristics of the employment. (See 1 A. Larson, The Law of Workmen's Compensation § 8.42 (1985).) Curbs, and the risks inherent in traversing them, confront all members of the public. The claimant is no more liable to **[*63]** twisting his ankle than he would have been had he been engaged in any other business. While it is true that he regularly crossed this curb to reach his car, there is nothing in the record to distinguish this curb from any other curb. As noted previously, the mere fact that the duties take the employee to the place of the injury **[***13]** and that, but for the employment, he would not have been there, is not, of itself, sufficient to give rise to the right to compensation. (See *State House Inn v. Industrial Comm'n* (1965), 32 Ill. 2d 160, 163; *Schwartz v. Industrial Comm'n* (1942), 379 Ill. 139, 145.) The claimant has the burden of establishing, by a preponderance of the evidence, some causal relation between the employment and the injury. *Quality Wood Products Corp. v. Industrial Comm'n* (1983), 97 Ill. 2d 417, 423; *Horath v. Industrial Comm'n* (1983), 96 Ill. 2d 349, 356.

When the finding of the Commission that the claimant's condition arose out of his employment is not supported by the evidence **[**670]** in the record, it is the duty of this court to set the award aside. (*County of Cook v. Industrial Comm'n* (1977), 68 Ill. 2d 24, 30.) In our opinion, the Industrial Commission's finding that the claimant's injury arose out of his employment is contrary to the evidence.

We note that in a factually similar case cited by Caterpillar, *Bartley v. Industrial Comm'n* (1970), 45 Ill. 2d 374, this court reached the **[***14]** opposite result. In *Bartley*, the claimant was injured on the employer's premises as she stepped from a concrete walk 11 inches above ground level. The employer argued that the claimant had failed to establish that the accident arose out of the employment. Citing the height of the ledge and the fact that this route was the claimant's usual means of exit, this court held that it was not unreasonable for the Commission to conclude that the ledge presented a situation **[*64]** involving more risk than that to which the general public is exposed, and confirmed the award.

As noted previously, this court is not prepared to adopt the position that whenever an injury is suffered on work premises during work hours it is compensable, regardless of whether the conditions or nature of the employment increased or contributed to the risk which led to the injury. (See *Rodriguez v. Industrial Comm'n* (1983), 95 Ill. 2d 166.) *Bartley* may be distinguished by the difference in the height of the ledge. However, to the extent it is irreconcilable with this decision, it is overruled.

For the foregoing reasons, the judgments of the appellate and circuit courts are reversed, **[***15]** and the award by the Industrial Commission is set aside.

Judgments reversed; award set aside.

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*231 Ill. App. 3d 1066, *; 596 N.E.2d 834, **;*
*1992 Ill. App. LEXIS 1104, ***; 173 Ill. Dec. 210*

BEST FOODS, Appellant, v. THE INDUSTRIAL **COMMISSION** et al. (Mary Jean Wright), Appellee).

No. 1-91-3103WC

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, INDUSTRIAL **COMMISSION** DIVISION

231 Ill. App. 3d 1066; 596 N.E.2d 834; **1992** Ill. App. LEXIS 1104; 173 Ill. Dec. 210

July 10, **1992**, Decided

PRIOR HISTORY: [*1]** Appeal from the Circuit Court of Cook County. No. 90 L 51366. Honorable Alexander P. White, Judge Presiding.

DISPOSITION: Judgment reversed; award set aside.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employer sought review of a judgment entered in the Circuit Court of Cook County (Illinois), which confirmed appellee Illinois Industrial **Commission's** decision that reversed an arbitrator's denial of appellee employee's claim for **compensation** under the **Workers' Compensation** Act, Ill. Rev. Stat. ch. 48, para. 138.1 et seq. (1983).

OVERVIEW: The employee sprained her ankle when she fell on the sidewalk in front of the employer's premises as she left work. The arbitrator denied her **workers' compensation** claim, finding that the accident occurred on a public sidewalk and that she was not entitled to **compensation.** On review, the **commission** reversed and found that she had sustained her burden of proof and established a compensable accident. On judicial review, the circuit court affirmed the **workers' compensation** award of the commissioner. On further review, the court determined that the **commission's** finding was against the manifest weight of the evidence and reversed the circuit court. The court ruled that the accident did not "arise out of" or "in the course of" her employment because, although there was evidence that the employee's presence was required in the performance of her duties in the area where she fell, there was no evidence that the employee was exposed to a risk common to the general public to a greater degree than other persons. The court noted that here was no evidence

that the fall was caused by the condition of the sidewalk and no evidence that the departure of other employees affected her in any way.

OUTCOME: The court reversed the circuit court's judgment confirming the **commission's** decision that reversed the arbitrator's denial of the employee's claim for **compensation** under the **Workers' Compensation** Act. The court set aside the **commission's** award.

CORE TERMS: claimant's, sidewalk, guard, shack, general public, employer's premises, compensable, exposed, route, exit, punched, front, accidental injuries, egress, hazard, arbitrator, manifest, remember, walked, ankle, feet, encountered, confirming, burden of proof, years earlier, photographs, disabled, concrete, twisted, machines

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Torts > Negligence > Causation > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN1 In order for an injury to be compensable under the **Workers' Compensation** Act, the injury must "arise out of" and "in the course of" the employment. Ill. Rev. Stat. ch. 48, para. 138.2 (1983). The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. 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 the employment. That the injury arose in the course of the employment is not sufficient to impose liability. To be compensable, the injury must also "arise out of" the employment. 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. 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. More Like This Headnote |
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Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

HN2 Where an injury takes place in an area that is the sole or usual route to the employer's premises and the route is attendant with a special risk or hazard, the hazard becomes part of the employment. Special hazards or risks encountered as a result of using a certain access route satisfy the "arising out of" requirement, whereas the employer's requirement that the employee use the route fulfills the "in the course of" element. Thus, any injuries encountered when both of the elements are met are compensable. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

HN3 Injuries that occur off the employer's premises are generally not compensable unless (1) the employee's presence was required in the performance of his or her duties and (2) the employee is thereby exposed to a risk common to the general

public but to a degree greater than other persons. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN4 When the finding of the Illinois Industrial **Commission** that the claimant's condition arose out of his or her employment is not supported by the evidence in the record, it is the duty of the reviewing court to set the award aside. More Like This Headnote

JUDGES: LEWIS, McCULLOUGH, WOODWARD, STOUDER, RAKOWSKI

OPINION BY: HENRY LEWIS

OPINION

[*1067] [835]** JUSTICE HENRY LEWIS delivered the opinion of the court:

The employer, **Best Foods,** appeals from the judgment of the trial court confirming the decision of the Illinois Industrial **Commission** (hereafter referred to as the "**Commission**"). The claimant sought **compensation** pursuant to the **Workers' Compensation** Act (Ill. Rev. Stat. 1983, ch. 48, par. 138.1 *et seq.)* (hereafter referred to as the "Act") when she sprained her ankle on January 25, 1984, somewhere on the sidewalk in front of the employer's premises as she left work for the day. Following a hearing conducted on November 16 and December 13, 1988, the arbitrator denied the claim, finding that the accident did not arise out of and in the course of her employment. Upon review the **Commission** reversed the decision of the arbitrator to find **[***2]** that the claimant had sustained her burden of proof in establishing an accident. The **Commission** found that the claimant was temporarily totally disabled for a period of 10 4/7 weeks and that she is permanently partially disabled to the extent of 15% of the right foot. The **Commission** awarded claimant the sum of $ 360 for medical expenses.

The employer presents a single issue for review: whether the decision of the **Commission** finding that the claimant sustained an accident arising out of her employment is against the manifest weight of the evidence.

At the hearing the claimant testified that she works as a laborer for the employer and that on January 24, 1984, she had "punched out" in the "guard shack" as she concluded her work for the day. She twisted her ankle, she said, "[when] I was leaving the guard shack. Just as I walked out the door on the sidewalk." As an employee she was required to go to the guard shack in order to punch out. She used the only exit from the guard shack and walked toward her husband, who was waiting for her in his car in the street in front of the guard shack. Asked on cross-examination whether she was close to the curb when she fell, she answered, "Sort **[***3]** of, yeah." She was unable to remember precisely where she fell on the sidewalk or to mark the spot where she fell on photographs of the sidewalk in front of the guard shack because, if she did so, she would be "just guessing." She described the condition of the sidewalk as "fair, fairly good condition. The condition was all right." She did not remember the sidewalk as damaged in any way and could not remember whether what appears in photographs of the sidewalk to be broken concrete was there at the time she fell. There was no ice or snow on the sidewalk. Admitted into evidence **[*1068]** were two insurance forms that state that she had twisted her ankle "on curb."

Testifying for the employer was Ray Thill, its plant engineer, who stated that the employer owns that part of the sidewalk in front of the door of the guard shack which extends for a

distance of approximately 3 1/2 feet away from this building. The City of Chicago, he said, owns the remainder of the sidewalk. He testified that four years earlier, in 1984, "everybody was going out the same way, all going out through the Watchman's Lodge with the exception of the office people." At the end of the shift, he stated, about 60 people would **[***4]** leave through the guard shack, or Watchman's Lodge, two at a time as they punched out at the machines located in that building.

The arbitrator found that the claimant sustained her injury on the property of the City of Chicago and, therefore, is not entitled to **compensation.** In reversing that decision, the **Commission** stated,

"No evidence was presented as to exactly where the accident took place on the sidewalk outside of Respondent's premises. Part of the sidewalk outside of the Respondent's premises is owned by Respondent. Evidently the accident either occurred on Respondent's premises or off of the premises but adjacent to Respondent's premises at an exit which Respondent ordered its' *[sic]* employees to **[**836]** use for ingress or egress. In this instance, [claimant] was using the exit for egress at the end of the shift after work en mass *[sic]* with many other employees and was in close proximity to Respondent's premises when she fell on the sidewalk. *Gray Hill v. Industrial* ***Commission,*** 145 Ill. App. 3d 371, 495 N.E.2d 1030 (1986); *Caterpillar Tractor Co. v. Industrial* ***Commission,*** 170 Ill. App. 3d 148, 524 N.E.2d 250, **[***5]** appeal allowed 122 Ill. 2d 571, 530 N.E.2d 240 (1988)."

HN1In order for an injury to be compensable under the Act, the injury must "arise out of" and "in the course of" the employment. (Ill. Rev. Stat. 1983, ch. 48, par. 138.2.) The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred; 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 the employment. *(Caterpillar Tractor Co. v. Industrial Comm'n* (1989), 129 Ill. 2d 52, 541 N.E.2d 665.) That the injury arose in the course of the employment is not sufficient to impose liability; to be compensable the injury must also "arise out of" the employment. *(* **[*1069]** *Caterpillar Tractor Co.,* 129 Ill. 2d 52, 541 N.E.2d 665.) 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; if an employee is exposed to a risk common to the general public to a greater degree **[***6]** than other persons, the accidental injury is also said to arise out of his employment. *(Caterpillar Tractor Co.,* 129 Ill. 2d 52, 541 N.E.2d 665.) In *Bommarito v. Industrial Comm'n.* (1980), 82 Ill. 2d 191, 195, 412 N.E.2d 548, 550, the supreme court observed,

"Professor Larson has stated that ***HN2***where an injury took place in an area which is the sole or usual route to the employer's premises, *and* the route is attendant with a special risk or hazard, the hazard becomes part of the employment. Special hazards or risks encountered as a result of using a certain access route satisfy the 'arising out of' requirement, whereas the employer's requirement that the employee use the route fulfills the 'in the course of' element. Thus, any injuries encountered when both of the elements are met are compensable. (See 1 A. Larson, Workmen's **Compensation** sec. 15.13, at 4-18 to 4-34 (1978).)" (Emphasis in original.)

In sum, as we stated in *Gray Hill, Inc. v. Industrial Comm'n* (1986), 145 Ill. App. 3d 371, 495 N.E.2d 1030, ***HN3***injuries that occur off the employer's premises are generally not compensable **[***7]** unless (1) the employee's presence was required in the performance of his or her duties and (2) the employee is thereby exposed to a risk common to the general public but to a degree greater than other persons.

In the instant case, although there is evidence that the employee's presence was required in the performance of her duties in the area where she fell, there is no evidence that the claimant was exposed to a risk common to the general public to a greater degree than other persons. Ray Thill testified that four years earlier, in 1984, about 60 persons would leave two at a time

as they punched out at the machines in the guard shack, or Watchman's Lodge. However, he did not testify as to the number of persons, if any, who were leaving when the claimant fell. Nor did the claimant indicate whether she left, in fact, when other employees departed.

The instant case differs from *Gray Hill, Inc. v. Industrial Comm'n* in that the evidence there established that at a certain time on the day in question the claimant and a number of other employees punched the time clock, walked approximately 20 feet, and left the building through a doorway the claimant said she was instructed **[*1070]** to use. **[***8]** The claimant then fell on an icy sidewalk within a few feet of the doorway. In *Gray Hill, Inc.* the **Commission** found that the flurry of exiting employees, combined with the icy sidewalk conditions, created a risk to which the claimant was more susceptible than the general public. On review we determined the finding not to be **[**837]** against the manifest weight of the evidence.

Here, however, the claimant did not show by her own testimony or that of any other witness that other employees were departing when she fell or that the departure of other employees affected her in any way. Further, the claimant testified that she did not know where she fell on the sidewalk, that there was no ice or snow on it, and that its condition was "all right"; there is no evidence the claimant's fall was in any way caused by the condition of the sidewalk, particularly by the presence of broken concrete, for example. In short, there is no evidence that the claimant was exposed to a risk not common to the general public and that her injury thus arose out of her employment. The **Commission's** finding that the claimant was using the exit for egress at the end of the shift after work en masse with many other employees **[***9]** is against the manifest weight of the evidence as is its finding that claimant sustained her burden of proof in establishing an accident.

*HN4*When the finding of the **Commission** that the claimant's condition arose out of his or her employment is not supported by the evidence in the record, it is the duty of the reviewing court to set the award aside. *(Caterpillar Tractor Co.,* 129 Ill. 2d 52, 541 N.E.2d 665.) Accordingly, the judgment of the circuit court confirming the decision of the **Commission** is reversed, and the **Commission's** award is set aside.

Judgment reversed; award set aside.

McCULLOUGH, P.J., and WOODWARD, STOUDER, and RAKOWSKI, JJ., concur.

*327 Ill. App. 3d 1050, *; 765 N.E.2d 1064, **;*
*2002 Ill. App. LEXIS 120, ***; 262 Ill. Dec. 456*

ANNA G. **HOMERDING,** Appellee, v. THE INDUSTRIAL COMMISSION, ET AL. (HOUSE OF CHARLES, Appellees.)

No. 1-01-1175WC

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, INDUSTRIAL COMMISSION DIVISION

327 Ill. App. 3d 1050; 765 N.E.2d 1064; 2002 Ill. App. LEXIS 120; 262 Ill. Dec. 456

February 21, 2002 Filed

SUBSEQUENT HISTORY: [*1]** Released for Publication March 29, 2002.

PRIOR HISTORY: Appeal from the Circuit Court of Cook County. 00L50794. The Honorable Alexander P. White, Judge Presiding.

DISPOSITION: Circuit court affirmed in part and reversed in part; commission reversed; arbitrator's decision reinstated in part.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employee sought benefits for injuries sustained while in the employ of appellee employer. The Circuit Court of Cook County (Illinois) rejected appellee industrial commission's finding that her accident did not occur in the course of her employment but affirmed a finding that the accident did not arise out of the employment, and therefore confirmed the denial of benefits. She appealed.

OVERVIEW: The sole issue presented on appeal was whether the injuries arose out of and in the course of employment to be compensable under the Illinois **Workers' Compensation** Act, 820 Ill. Comp. Stat. 305/1 et seq. (1996). The appeals court found it was clear that the employee fell while working, carrying out a task that was quite foreseeable and necessary to her job. Accordingly, her injury necessarily arose out of and in the course of her employment. Additionally, the risk of injury to which she was exposed was connected to her employment. An arbitrator interpreted the evidence correctly and therefore the appeals court ruled the arbitrator's decision should be reinstated. However, that portion of the arbitrator's decision pertaining to penalties against the employer was not reinstated, given the history of the case. Penalties would not be imposed when an employer reasonably and in good faith believed that

a claimant was not entitled to **workers' compensation** on the grounds the injury did not arise out of and in the course of the employment.

OUTCOME: The circuit court's judgment was affirmed in part and reversed in part.

CORE TERMS: claimant's, rear, exposed, wrist, parking lots, arbitrator's, salon, front, ice, injuries arose, general public, carrying, parked, mall, performing, door, fracture, manager, pain, arbitrator's decision, accidental injury, risk of injury, slipped, landlord, tenant's, opined, feet, course of' employment, contributed, compensable

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Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN1 In order for accidental injuries to be compensable under the Illinois **Workers' Compensation** Act, 820 Ill. Comp. Stat. 305/1 et seq. (1996), a claimant must show that his or her injuries both arose out of and in the course of his or her employment. "In the course of" employment refers to the time, place and circumstances under which the accident occurred. "Arising out of" one's employment requires an injury's origin to 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. Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN2 The determination of whether an injury arose out of and in the course of employment is a question of fact for the industrial commission which will not be set aside unless it is contrary to the manifest weight of the evidence. Generally appellate courts are not easily moved to set aside a commission's decision on a factual question, but must do so when the indisputable weight of the evidence compels an apparent, opposite conclusion. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN3 Penalties should not be imposed when an employer reasonably and in good faith believes that a claimant is not entitled to **workers' compensation** on the grounds the injury did not arise out of and in the course of the employment. More Like This Headnote

COUNSEL: For APPELLANT, John J. Castaneda, Molly C. Mason Corti, Freeman & Aleksy of Chicago.

For APPELLEE, William S. Robinson Nyhan, Pfister, Bambrick, Kinzie & Lowry, P.C., of Chicago.

JUDGES: JUSTICE RARICK delivered the opinion of the court: McCULLOUGH, P.J., and HOLDRIDGE, J., concur; HOFFMAN, J., specially concurs, O'MALLEY, J., joins.

OPINION BY: RARICK

OPINION

[*1051] [1066]** JUSTICE RARICK delivered the opinion of the court:

Claimant, Anna G. **Homerding,** sought benefits pursuant to the **Workers' Compensation** Act (Act) (820 ILCS 305/1 *et seq.* (West 1996)) for injuries sustained to her wrist on December 11, 1996, while in the employ of employer, House of Charles. The arbitrator determined that claimant's injuries arose out of and in the course of her employment and awarded her 14 2/7 weeks of temporary total disability benefits, medical expenses, and 30 percent loss of use of the left hand. The arbitrator also awarded penalties and attorney fees under sections 19(1), 19(k) **[***2]** and 16 of the Act for employer's unreasonable and vexatious refusal to pay any benefits as well as employer's misguided reliance on the opinion of its medical expert. On review, the Industrial Commission (Commission), with one dissent, reversed the decision of the arbitrator finding that claimant failed to prove she sustained an accidental injury which arose out of and in the course of her employment. The circuit court rejected the Commission's finding that claimant's accident did not occur in the course of her employment but affirmed the finding that the accident did not arise out of the employment, and therefore confirmed the denial of benefits. Claimant appeals. The sole issue presented on appeal is whether claimant's injuries arose out of and in the course of her employment.

Claimant was employed on a part-time basis as a nail technician for employer from June 2 until December 14, 1996. Employer is a beauty salon located in a small strip mall in Palos Park, Illinois. The mall consisted of some seventeen stores and two parking lots, one in front of the stores and one at the rear. The rear parking lot consisted of blacktop painted with yellow lines and contained no signs indicating **[***3]** that the spots were reserved for anyone's particular use. Employer had a rear entrance at its salon which led to the back lot. The lots in front and back of the stores were owned and maintained by the mall. Employer's lease obligated employer, as tenant, however, to pay a *pro rata* share of the common area costs, separate and apart from monthly rent. The lease also obligated employer to furnish the landlord with license numbers and descriptions of cars used by tenant and its employees and to pay the landlord $ 10 for each day on which a car of tenant or its agents and/or employees parked outside any area designated by landlord for employee parking. The lease further authorized landlord to tow any such car from the mall at tenant's cost. Employer's owner asserted he had no policy as to where his employees parked their cars. He testified "everybody parks back there" in reference to the back lot. Claimant testified on the first day she worked for employer, she parked her car in the front lot. The next day the manager of the salon told her "it was a 'no-no' to park in the front **[*1052]** parking lot" and that she had to park in the back lot with the rest of the people.

On December 11, 1996, claimant **[***4]** arrived at work at approximately 8:45 a.m. and parked in the back lot. She went into work by the back door and began setting up her supplies at her work station. She realized she needed a second case that was still in her car and went back out to the lot to retrieve it. The case measured approximately two and one-half feet by one and one-half feet and contained such items as a hand dryer. Carrying the case in her left hand, claimant slipped on some ice in the lot about five feet from employer's door. She and the case

both went flying and claimant attempted to break her fall with her left hand. She immediately felt great pain in her left wrist and remained on the ground for "a long time." She eventually was able to get up and walk into the salon. **[**1067]** She asked for ice and wrapped her hand in a towel. A coworker drove her to a drug store and purchased a wrist brace for her to weary Claimant did not have any money with which to purchase it herself. She returned to work and finished her shift. She continued to suffer pain in her wrist but worked the next two days wearing a brace. She then approached the manager and asked for time off because she was not able to work properly as her hand hurt **[***5]** so badly. She also told the manager she had an opportunity to visit her son and would only be gone a few days. The manager refused the time off and further informed claimant that her job would not be waiting for her if she took the time off anyway. Claimant did not return to work because of the pain. She also did not travel to visit her son because her hand was "swollen terribly." Claimant had no money or health insurance, and therefore, did not seek medical assistance until she was able to find a doctor who would treat and bill her later. Claimant first sought treatment with Dr. Paschal Panio, an orthopedic surgeon, on April 28, 1997. Dr. Panio noted swelling in her left wrist and 20 degrees lack of both supination and pronation and only 20 degrees of dorsiflexion and palmar flexion. X-rays revealed a healed Colles fracture to the left wrist with relatively good alignment. Dr. Panio opined the fracture was secondary to claimant's fall on December 11. He recommended occupational therapy and a wrist splint for heavy lifting. Claimant underwent therapy between May and July of 1997. Claimant was discharged from his care in August with the advice she continue her strengthening program **[***6]** and using the splint. Claimant informed him she still had some pain and limitation of motion, and Dr. Panio informed her this was to be expected given the nature of the fracture. Claimant testified she has not worked anywhere since leaving employer. She continues to experience pain in her left wrist and has difficulty lifting and pushing things. She also wears an elastic glove on her left hand at all times.

[*1053] On June 30, 1997, claimant was examined by Dr. Richard Shermer at the request of employer. Dr. Shermer opined that claimant's x-rays showed advanced healing of a fracture to her left wrist with no malalignment and at a stage of healing that could be dated to within three or four months prior to the x-ray. He noted, however, full pronation and supination of the wrist with shoulder abduction. He also noted claimant could not perform internal rotation and opined her complaints were "largely subjective with a nonorganic component."

The arbitrator concluded claimant sustained an accident on December 11, 1996, that arose out of and in the course of her employment. The arbitrator specifically noted claimant was performing a task at the time of her fall that was both reasonably foreseeable **[***7]** and incidental to her duties. Additionally, the arbitrator found that employer controlled the rear parking lot and required its employees to park there rather than in front of the salon. After awarding benefits and medical expenses, the arbitrator also determined employer was subject to penalties and fees because of its unreasonable and vexatious refusal to pay any benefits and its misguided reliance on the opinion of Dr. Shermer who never opined that claimant's wrist fracture was unrelated to her fall or that she could resume her regular work duties. The majority of the Commission reversed the arbitrator's decision after finding that claimant failed to prove she sustained an accidental injury arising out of and in the course of her employment. The majority pointed out that employer did not own, maintain or control the parking lot in which claimant fell. Employer also did not **[**1068]** limit claimant to a designated lot separate and apart from that utilized by the general public. Accordingly, the Commission concluded claimant was not exposed to a greater risk than the general public. Commissioner Kinnamon in her dissent concluded claimant was entitled to benefits because she parked in the area **[***8]** designated by employer for that purpose and because she was carrying a case containing work tools when she fell. The circuit court believed claimant sustained her burden of proving her accident occurred in the course of her employment by showing employer provided the rear parking lot and required her to park there. The court confirmed the Commission's decision not to award benefits, however, because claimant failed to meet the "ansmg out of' requirement. The court based its ruling on the fact that there was no evidence presented the case claimant was carrying at the time of her fall contributed to her accident.

HN1In order for accidental injuries to be compensable under the Act, a claimant must show

that his or her injuries both "arose out of' and "in the course of' his or her employment. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52, 57, 541 N.E.2d 665, 667, 133 Ill. Dec. 454 (1989); **[*1054]** *Knox County YMCA v. Industrial Comm'n,* 311 Ill. App. 3d 880, 884, 725 N.E.2d 759, 762, 244 Ill. Dec. 286 (2000). "In the course of' employment refers to the time, place and circumstances under which the accident occurred. *Knox County,* 311 Ill. App. 3d at 884, 725 N.E.2d at 762. **[***9]** "Arising out of' one's employment requires an injury's origin to 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. *Nabisco Brands, Inc. v. Industrial Comm'n,* 266 Ill. App. 3d 1103, 1106, 641 N.E.2d 578, 581, 204 Ill. Dec. 354 (1994). Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties. 266 Ill. App. 3d at 1106, 641 N.E.2d at 581.

HN2The determination of whether an injury arose out of and in the course of employment is a question of fact for the Commission which will not be set aside unless it is contrary to the manifest weight of the evidence. *Knox County,* 311 Ill. App. 3d at 885, 725 N.E.2d at 763. Generally we are not easily moved to set aside a Commission's decision on a factual question, but must do so when the indisputable weight of the evidence **[***10]** compels an apparent, opposite conclusion. *Montgomery Elevator Co.* v. *Industrial Comm'n,* 244 Ill. App. 3d 563, 567, 613 N.E.2d 822, 825, 184 Ill. Dec. 505 (1993). Such is the case in this instance.

At the time of the accident claimant had already begun her workday and was injured while performing a task that advanced employer's interests and allowed her to carry out her usual employment duties. She had already begun to set up her work station when she realized she needed additional supplies. These supplies were in a case in her car. Claimant went out to her car to retrieve the case and slipped on the ice in her efforts to return to the salon. It is clear that claimant fell while working, carrying out a task that was quite foreseeable and necessary to her job. Accordingly, her injury necessarily arose out of and in the course of her employment. Additionally, the risk of injury to which claimant was exposed was connected to her employment. Claimant **[**1069]** was required to park in the rear of employer's business on a lot employer financially contributed to maintain, and she needed certain supplies to perform her job. But for the demands of her job, she would not have needed **[***11]** to make a second trip to her car nor negotiate the ice between her car and the salon door while carrying a large case. Her risk of injury accordingly was greater than that of the general public. See *De Hoyos v. Industrial Comm'n,* 26 Ill. 2d 110, 114, 185 N.E.2d 885, 887 (1962). See also **[*1055]** *Bommarito v. Industrial Comm'n,* 82 Ill. 2d 191, 196-97, 412 N.E.2d 548, 550-51, 45 Ill. Dec. 197(1980). The arbitrator interpreted the evidence correctly and therefore the arbitrator's decision should be reinstated. We elect, however, not to reinstate that portion of the arbitrator's decision pertaining to penalties given the history of the case. ***HN3***Penalties should not be imposed when an employer reasonably and in good faith believed that a claimant was not entitled to **workers' compensation** on the grounds the injury did not arise out of and in the course of the employment. See *Complete Vending Services, Inc. v. Industrial Comm'n,* 305 Ill. App. 3d 1047, 1050-51, 714 N.E.2d 30, 32-33, 239 Ill. Dec. 472 (1999).

For the aforementioned reasons, we reverse the decisions of the Commission and the circuit court denying claimant benefits and reinstate that portion **[***12]** of the arbitrator's decision awarding benefits. No penalties and/or fees are to be assessed.

Circuit court affirmed in part and reversed in part; Commission reversed; Arbitrator's decision reinstated in part.

McCULLOUGH, P.J., and HOLDRIDGE, J., concur.

JUSTICE HOFFMAN, specially concurring; JUSTICE O'MALLEY joins:

CONCUR BY: HOFFMAN

CONCUR

JUSTICE HOFFMAN, specially concurring; JUSTICE O'MALLEY joins: I agree with the result reached by the majority in this case. However, because I believe that the majority's opinion might be misinterpreted as adopting a theory of recovery grounded in positional risk, which was repudiated by our supreme court in Brady v. Louis Ruffolo & Sons Construction Co., 143 Ill. 2d 542, 578 N.E.2d 921, 161 Ill. Dec. 275 (1991), I have elected to write separately.

As the majority correctly notes, an employee's injury is compensable under the **Workers' Compensation** Act (Act) only if it arises out of and in the course of her employment. 820 ILCS 305/2 (West 1998). 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, 137 Ill. Dec. 658 (1989). **[***13]**

An injury occurs "in the course of' employment when it is sustained while the claimant is at work or while she is performing activities in conjunction with her employment. Weiss v. Industrial Comm'n, 54 Ill. 2d 138, 142, 295 N.E.2d 459 (1973). In this case, the claimant was injured while retrieving a case containing work supplies from her car, which was parked in a parking lot behind her employer's premises. She fell during working hours and at a place where she might reasonably have been while performing her duties. Clearly, her injuries were sustained in the course of her employment. However, the fact that she was injured in the course of her employment is not sufficient **[*1056]** to impose liability under the Act. To be compensable, her injury must also have arisen out of her employment. Orsini v. Industrial Comm'n, 117 Ill. 2d 38, 45, 509 N.E.2d 1005, 109 Ill. Dec. 166 (1987).

"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 **[**1070]** injury." Caterpillar Tractor Co. v. Industrial Comm'n, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989). **[***14]** "There are three categories of risks an employee may be exposed to: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." Illinois Institute of Technology v. Industrial Comm'n, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795, 247 Ill. Dec. 22 (2000).

In this case, the claimant slipped and fell on ice in a parking lot. The risk of such a fall is not distinctly associated with her employment, nor is it personal to the claimant. The risk to which the claimant was exposed is a neutral risk. As a consequence, the question of whether her injury arose out of her employment rests on a determination of whether she was exposed to a risk of injury to an extent greater than that to which the general public was exposed. Illinois Institute of Technology v. Industrial Comm'n, 314 Ill. App. 3d at 162. The Commission found that she was not and denied her **compensation.** For the reasons which follow, I believe that the Commission's decision on this issue must be reversed as being against the manifest weight of the evidence, and the arbitrator's award, **[***15]** void of penalties and fees, reinstated.

The mere fact that the claimant's duties took her to the place of injury and that, but for her employment, she would not have been there, is not sufficient, of itself, to support a finding that her injuries arose out of her employment. Illinois Bell Telephone Co. v. Industrial Comm'n, 131 Ill. 2d 478, 485-86, 546 N.E.2d 603, 137 Ill. Dec. 658 (1989); Caterpillar Tractor Co., 129 Ill. 2d at 63. Further, contrary to the dissenting commissioners assertion, there is nothing in the record which could support a finding that the case of supplies which the claimant was carrying in any way contributed to her fall. This case is, therefore, distinguishable from Knox County YMCA v. Industrial Comm'n, 311 Ill. App. 3d 880, 725 N.E.2d 759, 244 Ill. Dec. 286 (2000). Nevertheless, I believe that the facts of this case clearly demonstrate that the claimant was exposed to a greater risk of injury than were members of the general public.

The beauty salon at which the claimant was employed is located in a strip mall. Two parking lots are available to the customers of the stores located in the mall, one lot in **[***16]** the front of the stores and another in the rear. The claimant testified that her manager, the owner's **[*1057]** wife, told her that she could only park in the lot to the rear of the salon. The ice upon which the claimant slipped was located in the rear lot, approximately five feet from the rear door to her employer's premises.

The Commission found that "whether or not *** [the claimant] was directed not to park in the front of the store is of no consequence ***. However, I find that fact to be central to a determination of whether the claimant's injury arose out of her employment.

The rear lot in which the claimant fell was available for use by members of the public and there is no doubt that, had a member of the public chosen to park in that lot, he or she would have been exposed to the same risk of falling to which the claimant was exposed. The critical difference is that the public was free to use the front lot and the claimant was not. By compelling the claimant to use the rear lot, her employer chose the route she would use to enter and leave the premises. The only practical way that the claimant could enter and leave was by the rear door which, on the day of her fall, exposed her **[**1071]** to **[***17]** the hazards of the ice in the rear parking lot. Since the claimant was required to use the rear lot, she was exposed to a risk common to the general public to a greater degree than other persons who were free to use the front lot. It is for this reason that I believe that the uncontradicted evidence in the record supports only one reasonable conclusion; namely, that the claimant's injury arose out of her employment. See Bommarito v. Industrial Commission, 82 Ill. 2d 191, 412 N.E.2d 548, 45 Ill. Dec. 197 (1980).

*378 Ill. App. 3d 113, *; 881 N.E.2d 523, **;*
*2007 Ill. App. LEXIS 1296, ***; 317 Ill. Dec. 355*

THOMAS **POTENZO,** Appellant, v. THE ILLINOIS WORKERS' **COMPENSATION** COMMISSION, et al., (JEWEL FOOD STORES, Appellee).

No. 1-07-0077WC

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, WORKERS' **COMPENSATION** COMMISSION DIVISION

378 Ill. App. 3d 113; 881 N.E.2d 523; 2007 Ill. App. LEXIS 1296; 317 Ill. Dec. 355

December 18, 2007, Filed

SUBSEQUENT HISTORY: Appeal denied by **Potenzo** v. Ill. Workers' Comp. Comm'n of Ill., 2008 Ill. LEXIS 520 (Ill., May 29, 2008)

PRIOR HISTORY: [*1]**
APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY. No. 05 L 51115. HONORABLE RITA M. NOVAK, JUDGE PRESIDING.

DISPOSITION: Reversed and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant claimant appealed a judgment of the Circuit Court of Cook County (Illinois) which affirmed a decision of the Illinois Workers' **Compensation** Commission, denying his claim for benefits brought pursuant to the Illinois Workers' **Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (1994).

OVERVIEW: The claimant argued that the Commission's finding that he failed to prove that his injuries arose out of his employment was against the manifest weight of the evidence. The appellate court concluded that the claimant's injuries were undoubtedly sustained in the course of his employment, as he was in the act of unloading a truck for appellee employer at the employer's store. The appellate court further found that the injuries arose out of the claimant's employment. The claimant was a traveling employee, exposed to all street risks to a great degree than the general public. As such, the injuries he suffered on the loading dock while unloading his truck were the result of an assault that arose out of his employment. Since the evidence established that the injuries the claimant sustained arose out of and in the

course of his employment, the claimant was entitled to workers' **compensation** benefits.

OUTCOME: The judgment of the circuit court was reversed and the case was remanded to the Commission for further proceedings.

CORE TERMS: claimant, attacked, exposed, truck, general public, assault, street, manifest, arbitrator's, injuries arose, assaulted, unloading, traveling, condominium's, alleyway, fracture, failed to prove, dock, delivery, compensable, confirmed, violence, hydraulic lifts, security problem, safety rails, alley, burden of proof, conflicting evidence, entitled to benefits, neighborhood

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Compensability > General Overview

HN1 An employee's injury is compensable under the Illinois Workers' **Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (1994), only if it arises out of and in the course of the employment. 820 Ill. Comp. Stat. Ann. 305/2 (1994). Both elements must be present at the time of the claimant's injury in order to justify **compensation.** More Like This Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

HN2 Injuries sustained on an employer's premises, or at a place where a claimant might reasonably have been while performing his or her duties, and while a claimant is at work, are generally deemed to have been received in the course of the employment. More Like This Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN3 Arising out of the employment refers to the origin or cause of a workers' **compensation** claimant's injury. 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. There are three types of risks which an employee might be exposed to, namely: 1) risks distinctly associated with the employment; 2) risks which are personal to the employee; and 3) neutral risks which have no particular employment or personal characteristics. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN4 An increased risk to an employee 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. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Evidence > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Evidence > Witnesses

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

HN5 It is the Illinois Workers' **Compensation** Commission's function to judge the

credibility of the witnesses, and resolve conflicting evidence. More Like This Headnote

Workers' Compensation & SSDI > Compensability > Injuries > General Overview

HN6 In assault cases, an injured employee has the burden of showing that the assault was work related in order to be entitled to benefits under the Illinois Workers' **Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (1994). Injuries sustained by an employee resulting from his exposure to a neutral risk such as an assault arise out of his employment if the employee was exposed to the risk to a greater degree than members of the general public. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN7 Where the street becomes the milieu of an employee's work, the employee is exposed to all street hazards to a greater degree than the general public. In such a case, the unusualness or infrequency of the accident does not preclude it from arising out of the employment, and no distinction has been made as to whether the accident is due to mechanical failure, human negligence or felonious acts. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN8 Whether an injury caused by a neutral risk arises out of the claimant's employment is a question of fact to be resolved by the Illinois Workers' **Compensation** Commission, and an appellate court will not disturb its determination unless it is against the manifest weight of the evidence. More Like This Headnote

COUNSEL: For Appellant(s): Edward L. Osowski, of Chicago. Thomas **Potenzo**, of counsel. Chicago, IL.

For Appellee(s): Hennessy & Roach, P.C., of Chicago. James P. Roach, of counsel. Chicago, IL.

JUDGES: Honorable Justices: Thomas E. Hoffman, J., with Honorable John T. McCullough, P.J. Honorable R. Peter Grometer, J., Honorable James K. Donovan, J., and Honorable William E. Holdridge, J., concur.

OPINION BY: HOFFMAN

OPINION

[*113] [524]** JUSTICE HOFFMAN delivered the opinion of the court:

The claimant, Thomas **Potenzo,** appeals from a judgment of the **[*114]** circuit court which confirmed a decision of the Illinois Workers' **Compensation** Commission (Commission), denying his claim for benefits brought pursuant to the Workers' **Compensation** Act (Act) (820 ILCS 305/1 *et seq.* (West 1994)). For the reason which follows, we reverse the judgment of the circuit court and remand this cause to the Commission for further proceedings.

The facts of this case are not in dispute. The claimant has been employed by Jewel Food Stores (Jewel) as a truck driver since 1991. On February 27, 1995, the claimant attempted to make a

delivery to the Jewel store **[***2]** located at 4355 N. Sheridan Road in Chicago. The loading dock for that store is located in the rear in an alleyway between the store building and a condominium **[**525]** structure. The alleyway has gates at both ends which are controlled by the condominium building. The loading dock is equipped with two hydraulic lifts which are used in the process of unloading trucks making deliveries to the Jewel store.

After waiting for another Jewel driver to unload his truck, the plaintiff backed his truck up to one of the hydraulic lifts and began unloading. The claimant testified that he placed two pallets of goods on the hydraulic-lift platform and began to lower the device with a hand control when he felt someone grab his ankle. The claimant stated that, as he turned, he was hit in the back of the head, and he immediately lost consciousness. The next thing that the claimant remembers is waking up in a hospital two days later.

As a result of the incident, the claimant suffered a right front parietal skull fracture, a cerebral concussion, a compression fracture at L3, a right radial arm fracture, a nasal fracture, a facial fracture, a liver laceration, a contusion of the right kidney, a left wrist sprain, **[***3]** and damage to several teeth. The claimant was off work from February 28, 1995, through June 4, 2004. On June 5, 2005, he returned to work without restrictions.

The claimant does not know who attacked him or why. Nothing was found to be missing from the trailer that the claimant was unloading, and neither the truck he was driving nor the trailer was damaged. However, after he regained consciousness, the claimant was unable to locate his wedding ring or his watch. On cross-examination, the claimant admitted that he has no way of knowing if the items were taken by his assailant.

The claimant testified that, when making deliveries prior to his injury, he had seen vagrants crawling out of dumpsters and rummaging through garbage in the alley behind the Jewel store where he was attacked. According to the claimant, he heard two to three security announcements come over the store's loudspeaker each time he was **[*115]** making a delivery in that alley. The claimant also testified that, in the 10 years prior to his injury, he had seen the victim of a stabbing, witnessed a theft from a truck, and observed "a lot of police activity" in the neighborhood surrounding the Jewel store where he was attacked. Although **[***4]** the claimant stated that "several of us" complained "on and off" about a security problem in the dock area where his attack took place, the claimant had no specific recollection of having made such a complaint prior to February 27, 1995.

The claimant described the hydraulic-lift platform he was using at the time of his injury and stated that it was not equipped with safety rails. When asked whether he would have been holding on to the safety rails when he was attacked had they been present, the arbitrator sustained Jewel's objection, concluding that the question called for the claimant to speculate. Thereafter, the claimant was allowed to make an offer of proof and testify that, if safety rails had been present on the hydraulic lift when the assailant grabbed his ankle, he would have grabbed the rail and prevented himself from falling.

In its case-in-chief, Jewel introduced into evidence the depositions of Deborah Roeder, the property manager of the condominium building which borders the alley where the claimant was attacked; Thomas Moran, a co-general partner in the entity that developed the condominium building; George Redfearn, Jewel's vice president for real estate; and Michael Terleski, **[***5]** one of Jewel's fleet maintenance supervisors. Each of these witnesses testified to their knowledge or opinion as to the lack of violence, criminal activity, or security problems in the area where the claimant **[**526]** was attacked. Roeder testified that she reviewed the condominium's records and, other than the incident involving the claimant, she found no reference to any other incidents occurring in the alleyway. She also stated that she was not personally aware of any other incidents involving an altercation or attack in the alleyway. Moran testified that the only incident of violence in the alleyway that was brought to his attention was the attack on the claimant. Redfearn stated that he was unaware of any security problems at the store where the claimant was injured. Terleski testified that, although he had been at the store where the claimant was injured to investigate broken or damaged equipment, he had never been

sent to that store to investigate any type of an altercation or vandalism. According to Terleski, he was unaware of any violent acts behind the Jewel store at 4355 N. Sheridan Road prior to February 27, 1995.

Following a hearing, the arbitrator issued a decision in which he **[***6]** found that the claimant failed to prove that the injuries he sustained on February 27, 1995, arose out of his employment with Jewel, and, as **[*116]** a consequence, the arbitrator denied the claimant benefits under the Act. In addition, the arbitrator ordered the claimant to reimburse Jewel for all medical bills which it had paid on his behalf.

The claimant sought a review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission vacated that portion of the arbitrator's decision which required the claimant to reimburse Jewel for medical bills and affirmed and adopted the arbitrator's decision in all other respects.

The claimant sought judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

For his first assignment of error, the claimant argues that the Commission's finding that he failed to prove that his injuries arose out of his employment with Jewel is against the manifest weight of the evidence. In a related argument, he asserts that the Commission subjected him to an improper burden of proof.

HN1An employee's injury is compensable **[***7]** under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 1994). 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, 137 Ill. Dec. 658 (1989).

HN2Injuries 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. *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52, 57, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989); *Wise v. Industrial Comm'n,* 54 Ill. 2d 138, 142, 295 N.E.2d 459 (1973). In this case, there is no doubt that the claimant's injuries were sustained in the course of his employment. He was in the act of unloading a Jewel truck at a Jewel store when he was attacked. The issue is whether his injuries arose out of his employment.

HN3Arising out of the employment refers to the origin or cause of the claimant's injury. "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 **[***8]** between the employment and the accidental injury." *Caterpillar Tractor Co.,* 129 Ill. 2d at 58. **[**527]** There are three types of risks which an employee might be exposed to, namely: 1) risks distinctly associated with the employment; 2) risks which are personal to the employee; and 3) "neutral risks which have no particular employment or personal characteristics." *Illinois Institute of Technology Research Institute v. Industrial Comm'n,* 314 Ill. App. 3d 149, 162, 731 N.E.2d 795, 247 Ill. Dec. 22 (2000).

[*117] In this case, the claimant was injured when he was attacked as he unloaded his truck. The risk of such an event is neither distinctly associated with his employment, nor is it personal to him. The risk of the claimant being injured as a result of a physical attack is neutral in nature.

Jewel contends that the risk of assault is a "street risk" which is compensable under the Act only if the employee was exposed to the risk to a greater degree than the general public. *Illinois Institute of Technology Research Institute,* 314 Ill. App. 3d at 163. ***HN4***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 **[***9]** a common risk more frequently than the general public. *Illinois Consolidated Telephone Co. v. Industrial Comm'n.,* 314 Ill. App.

3d 347, 353, 732 N.E.2d 49, 247 Ill. Dec. 333 (2000)(Rakowski, J., specially concurring). Jewel argues that it is not enough for the claimant to establish that his employment duties required him to be at the dock area where he was assaulted, as Illinois has rejected the positional risk doctrine. See *Brady v. L. Ruffolo & Sons Construction Co.,* 143 Ill. 2d 542, 548-50, 578 N.E.2d 921, 161 Ill. Dec. 275 (1991). According to Jewel, the claimant was required to demonstrate that the risk of the injury which he sustained was peculiar to his employment or that the risk was increased as a consequence of his work. *Brady,* 143 Ill. 2d at 550. Jewel asserts that the claimant did not, and cannot, show that his assault arose out of anything related to his employment. It argues that the he failed to carry his burden of establishing that, when assaulted on February 27, 1995, he was exposed to a greater danger than the general public, and as a consequence, failed to establish that his injuries arose out of his employment.

The claimant argues that, as a traveling employee, his duties exposed him to the "hazard of **[***10]** street injuries," and, as such, the injuries which he suffered when assaulted arose out of his employment. He contends that his employment "caused him to incur the special risk of contact with street crime and violence" and, as a consequence, he was not required to establish that the risk of being attacked was peculiar to his employment, only that his employment exposed him to the same risk as the general public. See *C.A. Dunham Co. v. Industrial Comm'n.,* 16 Ill. 2d 102, 112, 156 N.E.2d 560, 156 N.E.2d 929 (1959). Based on this analysis, the claimant concludes that the Commission held him to an incorrect burden of proof relating to the question of whether his injuries arose out of his employment. He also argues that, because the evidence established that he was a traveling employee who was injured as a result of a street risk, the Commission's finding that he failed to prove that his injuries arose out of his employment is against the manifest weight of the evidence.

[*118] Based upon the evidence of record, it is clear the claimant did not, and cannot, establish the reason he was attacked. No doubt, there was conflicting evidence on the issue of whether the place where the claimant was working at the time **[***11]** he was attacked increased his risk of harm. However, HN5 **[**528]** it was the Commission's function to judge the credibility of the witnesses, and resolve conflicting evidence. See *O'Dette v. Industrial Comm'n,* 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980). We cannot say based on the evidence of record that the Commission's determination that the claimant failed to establish that the area in which he was working when attacked was located in a high crime area or a dangerous neighborhood is against the manifest weight of the evidence. The question remains, however, whether the Commission's finding that the claimant failed to prove that his injuries arose out of his employment is against the manifest weight of the evidence.

In support of the Commission's denial of benefits in this case, Jewel relies upon the supreme court's decision in *Schultheis v. Industrial Comm'n.,* 96 Ill. 2d 340, 449 N.E.2d 1341, 70 Ill. Dec. 737 (1983), which holds that injuries suffered by employees resulting from assaults are not compensable under the Act if the claimant cannot demonstrate a reason for the assault. *Schultheis,* 96 Ill. 2d at 346-47. However, in *Schultheis,* the supreme court analyzed the "arising out of" component of a claim under **[***12]** the Act in the context of an assault upon an employee in a union office, not in the context of a traveling employee assaulted as he worked in an area which was accessible to members of the public. *Schultheis,* 96 Ill. 2d at 342.

In *Greene v. Industrial Comm'n.,* 87 Ill. 2d 1, 428 N.E.2d 476, 56 Ill. Dec. 884 (1981), the supreme court held that, HN6 in assault cases, the injured employee has the burden of showing that the assault was work related in order to be entitled to benefits under the Act. *Greene,* 87 Ill. 2d at 5. Injuries sustained by an employee resulting from his exposure to a neutral risk such as an assault arise out of his employment if the employee was exposed to the risk to a greater degree than members of the general public. *Illinois Institute of Technology Research Institute,* 314 Ill. App. 3d at 163.; *Springfield School Dist. No. 186 v. Industrial Comm'n.,* 293 Ill. App. 3d 226, 229, 687 N.E.2d 334, 227 Ill. Dec. 260 (1997); see also *Brady,* 143 Ill. 2d at 550.

In *C.A. Dunham Co. v. Industrial Comm'n.,* 16 Ill. 2d 102, 156 N.E.2d 560, 156 N.E.2d 929 (1959), the supreme court concluded that, HN7 "where the street becomes the milieu of the

employee's work, he is exposed to all street hazards to a greater degree than the general public." **[***13]** *C.A. Dunham Co.,* 16 Ill. 2d at 111. In such a case, "the unusualness or infrequency of the accident does not preclude it from arising out of the employment *** [and] no distinction has been made **[*119]** as to whether the accident is due to mechanical failure, human negligence or felonious acts." *C.A. Dunham Co.,* 16 Ill. 2d at 112.

The claimant argues that, as a traveling employee, he was exposed to all street risks to a greater degree than the general public, and, as such, the injuries that he suffered on February 27, 1995, as a result of an assault arose out of his employment. He argues that the Commission's finding to the contrary is against the manifest weight of the evidence. We agree.

The undisputed evidence in this case establishes that the claimant was a traveling employee whose duties required him to travel the streets and unload a truck in areas accessible to the public. The risk of being assaulted, although one to which the general public is exposed, was a risk to which the claimant, by virtue to his employment, was exposed to a greater **[**529]** degree than the general public. See *C.A. Dunham Co.,* 16 Ill. 2d at 111. Unlike the circumstance present in *Greene v. Industrial Comm'n.,* 87 Ill. 2d 1, 428 N.E.2d 476, 56 Ill. Dec. 884 (1981), **[***14]** there is no evidence in this case which would support an inference that the attack upon the claimant was based on a purely personal motive. Finally, it is undisputed that, when he was assaulted, the claimant was in the process of unloading his truck, an activity which was reasonably foreseeable by Jewel.

HN8 Whether the injury caused by a neutral risk arises out of the claimant's employment is a question of fact to be resolved by the Commission, and we will not disturb its determination unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute,* 314 Ill. App. 3d at 164. Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when, as in this case, the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n,* 244 Ill. App. 3d 563, 567, 613 N.E.2d 822, 184 Ill. Dec. 505 (1993).

Based upon the foregoing analysis, we conclude that the manifest weight of the evidence established that the injuries which the claimant sustained on February 27, 1995, arose out of and in the course of his employment with Jewel, and, as a consequence, **[***15]** he is entitled to benefits under the Act. Our resolution of this issue makes it unnecessary for us to address the other assignments of error asserted by the claimant.

For the reasons stated, we reverse the judgment of the circuit court which confirmed the decision of the Commission denying the **[*120]** claimant benefits under the Act and remand this cause to the Commission for further proceedings consistent with this opinion.

Reversed and remanded.

McCULLOUGH, P.J., GROMETER, HOLDRIDGE, and DONOVAN, JJ., concur.

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In

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*356 Ill. App. 3d 833, *; 826 N.E.2d 1043, **;*
*2005 Ill. App. LEXIS 290, ***; 292 Ill. Dec. 607*

TINLEY PARK HOTEL AND CONVENTION CENTER d/b/a HOLIDAY INN, Petitioner-Appellant, v. THE INDUSTRIAL COMMISSION, (Delores Wheeler), Respondents-Appellees).

NO. 1-04-1307WC

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, INDUSTRIAL COMMISSION DIVISION

356 Ill. App. 3d 833; 826 N.E.2d 1043; 2005 Ill. App. LEXIS 290; 292 Ill. Dec. 607

March 30, 2005, Decided
March 30, 2005, Opinion Filed

SUBSEQUENT HISTORY: [*1]** Released for Publication May 11, 2005.
Appeal denied by Tinley Park Hotel & Convention Ctr. v. Indus. Comm'n, 2005 Ill. LEXIS 1305 (Ill., Sept. 29, 2005)

PRIOR HISTORY: Appeal from the Circuit Court of Cook County. No. 03-L-51219. The Honorable Alexander P. White, Judge, presiding.

CASE SUMMARY

PROCEDURAL POSTURE: Claimant, a **worker,** filed an application for benefits against respondent, her employer, under the **Workers' Compensation** Act, 820 Ill. Comp. Stat. 305/1 et seq. An arbitrator ruled that the injuries did not arise out of employment. Respondent, the Illinois Industrial Commission, reversed the decision. The Circuit Court of Cook County (Illinois) confirmed and adopted the decision of the Commission. The employer appealed the judgment.

OVERVIEW: The **worker** testified that she broke her wrist and arm in a fall while she was working in a restaurant in the hotel. The **worker** and others testified that the carpet was new, and that a number of people had tripped on the carpet. The arbitrator found that the fall was caused by the **worker's** failure to lift her foot high enough while walking. The commission found that the fall was a compensable accident. In order to be compensated under the Act, a claimant had to show, by a preponderance of the evidence, that she suffered a disabling injury that arose out of and in the course of her employment under 820 Ill. Comp. Stat. 305/2. The **worker** stated she was required to wear slip-resistant shoes. The fact that the employer did not purchase the shoes did not mean that the shoes contributing to the fall was not attributable to her employment. The question of whether the **worker** did

or did not catch her foot in newly installed carpeting was a question of fact that rested upon the credibility of the **worker** and the evidence she presented. The state supreme court held that there was sufficient evidence to support the Commission's determination that the condition of the carpeting caused the fall.

OUTCOME: The judgment was affirmed.

CORE TERMS: claimant, carpeting, carpet, restaurant, shoes, walking, arbitrator's, general public, concrete, foot, tripped, surface, deputy's, customers, installed, tripping, hostess, exposed, uneven, floor, curb, industrial, connected, painted, chair, stumble, began working, risk of injury, installation, manifest

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Administrative Proceedings > Evidence > Witnesses

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN1 In order to be compensated under the Illinois **Workers' Compensation** Act, a claimant must show, by a preponderance of the evidence, that she suffered a disabling injury that arose out of and in the course of her employment, 820 Ill. Comp. Stat. 305/2. An injury "arises out of" a **worker's** employment if it originates from a risk connected with, or incidental to, her job and involves a causal connection between the employment and the accidental injury. A risk is considered incidental to employment where it belongs to or is connected with what a **worker** has to do in fulfilling her duties. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

HN2 Generally, the question of whether an employee's injury arose out of or in the course of her employment is a question of fact and the Illinois Industrial Commission's determination will not be disturbed on review unless it is against the manifest weight of the evidence. Unless the facts are undisputable and susceptible of only a single inference, the question is one of fact and not one of law. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

HN3 In order for the Illinois Industrial Commission's finding of fact to be held against the manifest weight of the evidence, an opposite conclusion must be clearly evident. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: For Appellant: Robert E. Luedke, Thomas P. Marnell & Associates, Chicago, IL.

For Appellee: Richard E. Aleksy, Allison M. Cychosz, Corti, Freeman & Aleksy, Chicago, IL.

JUDGES: JUSTICE GOLDENHERSH delivered the opinion of the court. MCCULLOUGH, P.J., and

HOFFMAN, CALLUM, and HOLDRIDGE, JJ., concur.

OPINION BY: GOLDENHERSH

OPINION

[1044]** **[*834]** JUSTICE GOLDENHERSH delivered the opinion of the court:

Claimant, Delores Wheeler, filed an application for adjustment of claim against the employer, Tinley Park Hotel and Convention Center, d/b/a Holiday Inn, under the **Workers' Compensation** Act (Act) (820 ILCS 305/1 *et seq.* (West 2000)). An arbitrator ruled claimant's injuries did not arise out of her employment. The Illinois Industrial Commission [1] (Commission) reversed the decision of the arbitrator. The circuit court of Cook County confirmed and adopted the decision of the Commission. The issue on appeal is whether the Commission's determination that claimant's injuries arose out of **[***2]** the course of her employment is against the manifest weight of evidence. We affirm.

FOOTNOTES

1 Effective January 1, 2005, the name of the Industrial Commission was changed to the "Illinois **Workers' Compensation** Commission." However, because the Industrial Commission was named as such when the instant cause was originally filed, we will use this name for purposes of consistency.

FACTS

Claimant filed an application for adjustment of claim stating that she injured her ribs, left arm, and left shoulder in a work accident of September 22, 2001. The matter proceeded to arbitration. 820 ILCS 305/2-19(b) and 18(a) (West 2002).

At arbitration, claimant testified that she had worked for the employer for approximately 20 years, but had only worked at Banana's Restaurant at the employer's Tinley Park location for not quite a year prior to the alleged accident. Claimant testified she was 66 years old **[*835]** at that time. Claimant testified that she worked two jobs for the employer, as a waitress and as a hostess. Claimant usually **[***3]** worked four **[**1045]** days as a hostess and one day a week as a waitress. Claimant's schedule varied somewhat depending on the needs of the employer.

Claimant testified that when she began working at Banana's Restaurant, the flooring was painted concrete with no carpeting. She stated that two weeks prior to the alleged accident, carpet was installed. Claimant admitted a sample of the carpet into evidence. Claimant testified that she was required by the employer to wear black, closed in, rubber soled shoes. She described the requirement for the shoes as "anything that wouldn't slide." Claimant submitted the shoes she was wearing on the date of the alleged accident into evidence. Claimant testified that in the two week period after the carpet was installed, she observed people tripping.

Claimant testified that on September 22, 2001, she was working as a hostess for the employer. She stated that her duties included seating people, taking telephone calls, making sure the menus were all in the right place, and giving customers menus. Claimant stated that at approximately 4 p.m., three people came in requesting seats in the smoking section, which is at the rear of the restaurant. Claimant was walking **[***4]** the customers to their seats when she tripped and fell. Claimant was asked:

"Q. [Attorney for Claimant] What, if anything, caused you to trip?

A. I tripped on the carpet. When I was walking, my right foot got stuck like on the carpet; and I just went down."

Claimant testified that she broke her wrist and arm from the fall. She was unable to catch herself on anything to break the fall. Claimant specifically denied tripping over her own feet. She testified that she landed on her stomach and could not turn herself over. Paramedics responded and transported claimant to the hospital. Claimant testified that she told personnel at the hospital how she fell.

On cross-examination, claimant testified that she did not see any food, liquid, or any foreign object on the floor, either before or after the accident. Claimant admitted that the carpet did not have any "frayed edges or worn spots." Claimant testified:

"Q. [Attorney for the employer] Okay. Isn't it true that this carpeting was clean and level in the area where you fell?

***

A. Well, I know it was clean. I don't know about the level part.

I know before they laid the carpet, the concrete **[***5]** was unlevel, had waves in it, but I can't - I don't remember any uneven parts, no.

Okay. You don't recall seeing any uneven parts in the carpeting, is that correct?

[*836] A. That's right.

Q. Okay. You were simply walking when you fell?

Right.

Q. Now, after your fall, did you look at the area where you fell?

Q. Oh, yes.

A. Okay. You didn't see any uneven parts, did you?

A. No, sir.

Q. Okay. You didn't see any frayed parts or any trim pieces sticking up or anything like that?

A. No, sir."

Claimant testified that the employer did not issue her shoes and that she selected and purchased them on her own.

Medical records indicate that claimant was transported to the emergency room on the date of the accident. The hospital records give a history that claimant reported **[**1046]** having "tripped over carpeting" and that her "foot became entangled in rug."

Dina Sholtes testified that she began working as a hostess at Banana's Restaurant in December 2001. The new carpeting was installed by the time Sholtes began working for the employer, but she testified that she had "noticed several different people **stumble**" walking back and forth from the **[***6]** buffet. Sholtes testified:

> Q. [Attorney for claimant] Let me start again. With respect to the buffet that you were describing, people going back and forth to the buffet, what[,] if anything[,] unusual have you noticed as customers have been going back and forth to the buffet?
>
> A. Well, I have noticed regardless of what age that they are, I have noticed several people **stumble** as they walk on the carpeting.
>
> I even watched a man **stumble** on the carpeting and then almost fall into the little island that we have in the middle of the restaurant, too.
>
> Q. Are these observations limited to the people using the restaurant as customers or have you also had an occasion to observe this with respect to coworkers?
>
> A. I have seen customers, coworkers, and even myself have done the same thing."

On cross-examination, Sholtes testified that she did not consider the carpet to be flat because there were lumps.

Paul Griva, the chief engineer at the employer's Holiday Inn Select facility in Tinley Park, testified that his duties were to maintain the building properly, including the carpeting. Griva supervised the installation of the carpeting. According to Griva, **[***7]** the concrete or subfloor was flat and level. The carpeting was glued directly to the concrete as there is no padding. After installation of the carpeting, Griva personally visually inspected the installation prior to making payment to the **[*837]** installers. Griva testified that he did not notice any depressions or high spots in the subfloor. He stated that he had the opportunity to have the installers come back and correct any problem he had discovered, but there were no defects. Griva testified that within the month prior to arbitration, he had a conversation with claimant in which she stated that her foot basically just stopped on the carpet and she went down. On cross-examination, Griva testified that any complaints by either employees or customers about tripping on the carpeting would probably go to the restaurant manager and not to him. Griva also admitted that he was not a carpeting expert and did not personally install the carpeting. He stated that when he referred to the carpeting being flat, he was talking about the concrete surface on which it was laid, as opposed to the actual texture of the carpeting.

Tony Vari, director of security for the employer, testified that he responded **[***8]** to the scene when claimant fell. Van testified that as claimant was laying on the floor, he asked her what had happened. He stated that claimant responded that she had been walking along the carpet and tripped. When Vari asked claimant what she tripped over, she said, "nothing, tripped over the carpet." Vari observed the area where claimant fell and did not see any liquid, food, high spots, depressions, or frayed or worn carpeting. He testified that he had not received any other complaints front other employees or customers about falling on the carpeting. On cross-examination, Van testified that he did not actually see claimant fall. He also stated that he is not the person who oversees the operation of the restaurant.

[1047]** The arbitrator found claimant's injuries did not arise out of her employment. The arbitrator found no risk of injury connected with claimant's employment, nor any risk to the general public to which she was exposed to a greater degree as a result of her employment. The arbitrator stated:

> "An accidental injury arises out of one's employment when the injury either has its origin in some risk connected with or incidental to the employment, or it is caused by some **[***9]** risk to which the employee is exposed to a greater degree than the general public by virtue of her employment. [Citation.] In the cause at bar, [claimant] tripped when her foot caught in the carpeting on which she walked. Walking on carpeting is an activity of daily life, and tripping while walking is a risk to which the general public is constantly exposed. The carpet involved in

> [claimant's] fall is a low nap industrial carpeting. Based upon [claimant's] description of the fall, it is clear [claimant] simply failed to lift her foot a sufficient distance from the floor as she walked mistepping and then falling. There is no evidence of any defect in the carpeting which created a **[*838]** particular risk of employment. There is no evidence the texture, fiber content or weave of the rug presented any specific risk greater than that to which the general public is exposed. [Claimant] was not carrying anything in her hands when she fell. While Ms. Sholtes testified to other incident[s] of individuals tripping, Mr. Van testified he received no complaints from patrons or employees regarding the carpeting. Ms. Sholtes testified she saw at least one patron slip, undercutting the inference **[***10]** that [claimant's] required footwear had any role in her fall. [Claimant's] injury arising from a misstep on carpeting is legally indistinguishable from the employee stepping from the curb in ***Caterpillar*** *v. Industrial Com.*, 129 Ill. 2d 52, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989).
>
> The arbitrator notes this not a case of an unexplained fall. [Claimant] testified clearly she fell because her foot stuck on the carpet as she walked."

The Commission initially entered a decision reversing the arbitrator with one commissioner dissenting. Claimant filed a petition for recall for clerical error under section 19(f) claiming the Commission failed to address the issue of penalties and fees. The Commission entered a second decision and opinion on review reversing the arbitrator, stating:

> "Based upon the above, and the record as a whole, the Commission reverses the decision of arbitrator to find that [claimant] sustained accidental injuries arising out of and in the course of her employment on September 22, 2001. The Commission finds that when [claimant] first began working at the restaurant in January, 2001, the floor surface was painted concrete, and did not contain any **[***11]** carpeting. [Claimant] testified that the painted concrete was uneven, and contained waves. The floor remained painted concrete until two weeks prior to September 22, 2001, when [the employer] installed new carpet in the restaurant. The Commission notes that the [claimant] and her co-**worker,** Dina Sholtes, testified about people tripping on the new carpet. The Commission observed the texture of the carpeting ([claimant] Ex. 1) and finds it reasonable that a rubber sole would stick to the texture of the carpeting. The Commission finds that the [claimant's] history of accident has always been consistent with her foot getting stuck or tangled on the carpet. The Commission finds that installation of anew working surface, different from the surface on which [claimant] was accustomed to traversing, also **[**1048]** contributed to increase her risk of injury. The [] Commission further relies on the case of *Homerding v Industrial Commission,* 327 Ill. App. 3d 1050, 765 N.E.2d 1064, 262 Ill. Dec. 456, 460 (2002) in which the appellate court stated that 'it is clear that claimant fell while working, carrying out a task that was quite **[*839]** foreseeable and necessary to her job. Accordingly, **[***12]** her injury necessarily arose out of and in the course of her employment. Additionally, the risk of injury to which claimant was exposed was connected to her employment.' [Claimant's] work duties as a hostess required her to traverse through the restaurant on the new working surface throughout her shift."

The circuit court confirmed the Commission. The employer appeals.

ANALYSIS

The employer argues that the issue on review is whether the Commission's decision which had found claimant suffered a compensable accident on September 22, 2001, is erroneous as a matter of law. This characterization fails to address the arguments presented and the

appropriate standard of review. A review of the arbitrator's and Commission's decisions, along with the arguments of the parties, reveals that what is at issue is whether claimant's injuries arose out of the course of her employment. The standard of review is whether the Commission's decision was against the manifest weight of the evidence.

HN1 In order to be compensated under the Act, a claimant must show, by a preponderance of the evidence, that she suffered a disabling injury that arose out of and in the course of her employment. **[***13]** 820 ILCS 305/2 (West 2002); *Baggett v. Industrial Comm'n,* 201 Ill. 2d 187, 194, 775 N.E.2d 908, 912, 266 Ill. Dec. 836 (2002). An injury "arises out of" a **worker's** employment if it originates from a risk connected with, or incidental to, her job and involves a causal connection between the employment and the accidental injury. *Nascote Industries v. Industrial Comm' n,* 353 Ill. App. 3d 1056, 820 N.E.2d 531, 534, 289 Ill. Dec. 755 (2004). A risk is considered incidental to employment where it belongs to or is connected with what a **worker** has to do in fulfilling her duties. *Baggett v. Industrial Comm'n,* 201 Ill. 2d 187, 194, 775 N.E.2d 908, 912, 266 Ill. Dec. 836 (2002); ***Caterpillar*** *Tractor Company v. Industrial Comm'n,* 129 Ill.2d 52, 58, 541 N.E.2d 665, 667, 133 Ill. Dec. 454 (1989).

Employer contends there are no factual disputes and asserts that claimant was simply walking on carpet that was clean, flat, and free of defects. It characterizes claimant's assertion as being that the carpet is new, but newness is not a defect. Employer quotes the dissent to the initial Commission decision:

> "Walking on a regular surface is not a **[***14]** risk peculiar to employment. The public has the same risk exposure. Falling on a smooth carpeted surface is not an accident under our statute. ***Caterpillar*** *Tractor v. Industrial Commission,* 129 Ill. 2d at 58, 541 N.E.2d at 667.

At first glance, the employer's brief and the dissenting opinion appear to raise an interesting question of law. If the condition of the **[*840]** carpet was not defective, could claimant have been considered to be at a greater degree of risk than the general public due to the requirement of her work as a hostess that she move about the restaurant? In ***Caterpillar,*** the court provided an analysis of what it means for an injury to arise out of the course of employment. ***Caterpillar,*** 129 Ill. 2d at 58, 541 N.E.2d at 667. In ***Caterpillar,*** **[**1049]** an employee injured himself while stepping off a curb in the employer's parking lot. The first step the court took was to consider whether the employee's injury resulted from the condition of the premises. ***Caterpillar,*** 129 Ill. 2d at 59, 541 N.E.2d at 668. The court noted that the employee did not skip, trip, or fall; he simply stepped off the curb and twisted his ankle. ***Caterpillar,*** 129 Ill. 2d at 60, 541 N.E.2d at 668. **[***15]** It held that the injury did not result from the condition of the premises as there was no evidence that the curb was either hazardous or defective. ***Caterpillar,*** 129 Ill. 2d at 60, 541 N.E.2d at 668. The court then considered whether the employee was subjected to a greater degree of risk than the general public due to his employment. ***Caterpillar,*** 129 Ill. 2d at 60, 541 N.E.2d at 668. The court found that the risk take by the employee in traversing the curbs was the same as that of the general public and, therefore, did not arise out of the course of his employment. ***Caterpillar,*** 129 Ill. 2d at 62, 541 N.E.2d at 669.

This court recently distinguished ***Caterpillar***, in *Nascote Industries v. Industrial Comm' n,* 353 Ill. App. 3d 1056, 820 N.E.2d 531, 534, 289 Ill. Dec. 755 (2004). In *Nascote,* the employee worked as a trimmer in a molding department. The employee's duties included moving bumpers throughout the production facility and then moving trimmed bumpers onto a rack. After the employee had placed a trimmed bumper in a rack, she turned around, stepped out of the rack and onto the floor injuring herself. **[***16]** The Commission found that the employee's injuries occurred as a result of her attempting to keep pace with the production line.

In affirming the Commission, this court distinguished ***Caterpillar***. We noted that under

Caterpillar, certain acts, such as walking down stairs at work, by themselves do not establish that an employee faces a greater risk than the general public. *Nascote,* 353 Ill. App. 3d at 1060, 820 N.E.2d at 535; see ***Caterpillar,*** 129 Ill. 2d at 58, 541 N.E.2d at 667; *Nabisco Brands, Inc. v. Industrial Comm'n,* 266 Ill. App. 3d 1103, 1107, 641 N.E.2d 578, 582, 204 Ill. Dec. 354 (1994). This court distinguished ***Caterpillar*** on the ground that in ***Caterpillar*** the employee was not required as part of his job duties to continuously traverse the curb. *Nascote,* 353 Ill. App. 3d at 1061, 820 N.E.2d. at 535. In contrast, in *Nascote,* the employee was not merely walking down a step, but she was taking a route prescribed by her job. *Nascote,* 353 Ill. App. 3d at 1061, 820 N.E.2d at 535.

[*841] The circuit court in this case indicated that the Commission's decision should be confirmed **[***17]** under the analysis of *Nascote*. The court found claimant "was exposed to a risk greater than the general public because she was continually forced to perform an activity for work purposes, and it is reasonable to believe that an injury, such as a fall, was foreseeable."

Our review of the record indicates that the Commission was presented with conflicting evidence regarding the condition of the carpeting and the risk encountered by the claimant. Contrary to the employer's assertion, there was evidence that the carpeting presented claimant with an increased risk of injury.

The Commission was presented with a factual question regarding the condition of the carpeting at the time of the accident. Claimant testified that until a couple of weeks prior to the alleged accident, there was no carpet, but rather painted concrete which was uneven and contained waves. Claimant testified that she had seen several people **stumble** on the newly-installed **[**1050]** carpeting. Claimant's testimony was supported by that of a co-**worker** who testified she too had observed several people **stumble**. The co-**worker** testified that she stumbled on the newly-installed carpeting. The employer countered with testimony from **[***18]** its chief engineer and its director of security that the carpeting did not appear defective and that neither one of them personally received complaints about the carpeting from either customers or employees.

Claimant also presented evidence that the shoes she was wearing contributed to her fall. Claimant testified that she was required to wear black, closed-in, rubber soled shoes as part of her job. According to claimant, she needed to wear shoes that would not slide in order to perform her duties. The shoes were submitted into evidence. The employer points out that claimant purchased the shoes, and that the shoes were not issued by the employer. The fact that the employer did not purchase the shoes, however, does not mean that the shoes contributing to the fall was not attributable to her employment in light of the above-stated employer requirement.

HN2Generally, the question of whether an employee's injury arose out of or in the course of her employment is a question of fact and the Commission's determination will not be disturbed on review unless it is against the manifest weight of the evidence. *O'Dette v. Industrial Comm'n,* 79 Ill. 2d 249, 253, 403 N.E.2d 221, 224, 38 Ill. Dec. 133 (1980). **[***19]** Unless the facts are undisputable and susceptible of only a single inference, the question is one of fact and not one of law. *Nascote,* 353 Ill. App. 3d at 1059, 820 N.E.2d at 534. The question of whether claimant did or did not catch her foot in newly installed carpeting that posed an **[*842]** increased risk of fall is a question of fact that rested upon the credibility of claimant and the evidence she used to support her testimony.

The employer's reliance on *Hopkins v. Industrial Comm'n,* is misplaced. *Hopkins v. Industrial Comm'n,* 196 Ill. App. 3d 347, 351, 553 N.E.2d 732, 734, 143 Ill. Dec. 25 (1990). In *Hopkins* the Commission denied **compensation** to a deputy bailiff who injured himself while training a rookie. During on-the-job training, the rookie was sitting in a swivel chair normally used by the deputy while the deputy was sitting nearby in a non-swivel, straight back chair. The rookie asked a question and, as the deputy turned in his chair to answer, he heard a pop and felt pain

in his back. The appellate court affirmed the denial of the award. The court found there was evidence that the injury resulted from hazard personal to the deputy **[***20]** and unconnected to work. *Hopkins,* 196 Ill. App. 3d at 352, 553 N.E.2d at 735. The Commission was presented with testimony from a medical expert that the deputy had degenerative disc disease and was predisposed to back injury. The doctor testified that the same thing could have happened to the deputy while he was sitting in his living room watching television. *Hopkins,* 196 Ill. App. 3d at 350, 553 N.E.2d at 733. The court found there was no suggestion that the chair was defective or unusual in anyway or that the deputy's holster got caught on the chair. *Hopkins,* 196 Ill. App. 3d at 351, 553 N.E.2d at 735.

Employer asserts that *Hopkins* stands for a broader principle that newness itself is not a defect. Even if the employer's interpretation were accepted, it would be of minor relevance to the case at hand. The Commission's decision does not rest primarily on there being a different work environment or change in routine. Instead, the Commission found credible the evidence suggesting that the condition of the newly installed carpet increased the **[**1051]** risk of a fall. Unlike in *Hopkins* the record supports a finding that claimant would **[***21]** have been more likely to fall at work than while in her living room.

The Commission had the opportunity to judge the credibility of the witnesses and to resolve conflicts in evidence. *O'Dette,* 79 Ill. 2d at 253, 403 N.E.2d at 223; see *Cf. Vill v. Industrial Comm'n,* 351 Ill. App. 3d 798, 803, 814 N.E.2d 917, 922, 286 Ill. Dec. 691 (2004) (Commission did not find credible claimant testimony that she caught her foot in a crack in parking lot surface). HN3 In order for a Commission's finding of fact to be held against the manifest weight of the evidence, an opposite conclusion must be clearly evident. *Peabody Coal v. Industrial Commission,* 349 Ill. App. 3d 493, 497, 812 N.E.2d 59, 64, 285 Ill. Dec. 470 (2004). In this case, there was sufficient evidence in the record to support the Commission's determination that the condition of the carpeting caused claimant to fall. See, *e.g.*, **[*843]** *Litchfield Healthcare Center v. Industrial Comm' n,* 349 Ill. App. 3d 486, 491, 812 N.E.2d 401, 406, 285 Ill. Dec. 581 (2004) (employee tripped on uneven **sidewalk** connecting parking lot to the workplace); *Homerding v. Industrial Comm'n,* 327 Ill. App. 3d 1050, 1054, 765 N.E.2d 1064, 1069, 262 Ill. Dec. 456 (2002) **[***22]** (employee slipped on ice outside rear entrance of salon while performing work task).

Accordingly, the order of the circuit court of Cook County confirming and adopting the decision of the Commission is hereby affirmed.

Affirmed.

MCCULLOUGH, P.J., and HOFFMAN, CALLUM, and HOLDRIDGE, JJ., concur.

In

*365 Ill. App. 3d 906, *; 851 N.E.2d 72, **;*
*2006 Ill. App. LEXIS 358, ***; 303 Ill. Dec. 174*

UNIVERSITY OF **ILLINOIS,** Appellant, v. THE INDUSTRIAL COMMISSION OF **ILLINOIS** et al., (**NADINE** BURNES, Appellee).

No. 1-05-2550WC

APPELLATE COURT OF **ILLINOIS,** FIRST DISTRICT, **WORKERS' COMPENSATION** COMMISSION DIVISION

365 Ill. App. 3d 906; 851 N.E.2d 72; 2006 Ill. App. LEXIS 358; 303 Ill. Dec. 174

May 3, 2006, Filed

SUBSEQUENT HISTORY: Released for Publication July 28, 2006.

PRIOR HISTORY: [*1]** APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY. No. 04 L 051217. HONORABLE RITA M. NOVAK, JUDGE PRESIDING.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant **university** challenged a decision of the Circuit Court of Cook County (**Illinois**) which confirmed a decision of the Industrial Commission of **Illinois** awarding benefits pursuant to the **Workers' Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (2000) to appellee claimant, who was employed by the **university** as a nurse-midwife. The claimant reportedly tripped on a metal **threshold** and twisted her knee.

OVERVIEW: The **university** disputed the Commission's finding that the claimant sustained accidental injuries arising out of her employment, 820 Ill. Comp. Stat. Ann. 305/2 (2000). The claimant's version of the events leading to her injury, although contradicted by an entry in the emergency room record, was consistent with the history she gave to a police officer. The walkway where she was injured connected the **university's** parking structure where the claimant parked in an area designated for employees and the hospital's outpatient care facility. The Commission could reasonably infer, therefore, that the walkway was a usual access route designated for employees and the hospital. Next, the **university** argued that the claimant had not met her burden of proving a causal relationship between her alleged accident and her condition of ill-being. The appeals court disagreed. The claimant's testimony and the records of her medical treatment provided sufficient circumstantial evidence that her

current condition of ill-being was causally related to her accident. The fact that she had a pre-existing right knee condition did not mandate the conclusion that it was the sole cause of her current condition.

OUTCOME: The judgment was affirmed.

CORE TERMS: claimant, right knee, pain, knee, floor, emergency room, ill-being, parking structure, manifest, tripped, walkway, medial, current condition, metal, arthroscopic surgery, meniscus, partial, tear, accidental injuries, pre-existing, designated, causally, exposed, causal, strip, consisting, surgery, ice, police officer, injuries arising

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN1 An employee's injury is compensable under the **Workers' Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (2000), only if it arises out of and in the course of the employment. 820 Ill. Comp. Stat. Ann. 305/2 (2000). Both elements must be present at the time of the claimant's injury in order to justify **compensation.** More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN2 Whether an injury arose out of a claimant's employment is a question of fact to be resolved by the Industrial Commission of **Illinois** and its finding in this regard will not be set aside on review unless it is against the manifest weight of the evidence. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

HN3 Arising out of the employment in the context of **workers' compensation** refers to the origin or cause of a claimant's injury. More Like This Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

HN4 For an injury to "arise out of" the employment for **workers' compensation** 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. Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. More Like This Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN5 An injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Evidence > Witnesses

HN6 It is the function of the Industrial Commission of **Illinois** to judge the credibility of witnesses and resolve conflicting evidence. More Like This Headnote

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN7 When an injury to an employee arriving for work takes place in an area of the employer's premises which constitutes a usual access route for employees and is caused by some special risk or hazard located thereon, the "arising out of" requirement of the **Workers' Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (2000), is satisfied. More Like This Headnote

Evidence > Procedural Considerations > Circumstantial & Direct Evidence

Workers' Compensation & SSDI > Administrative Proceedings > Awards > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Evidence > Witnesses

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

HN8 A claimant's testimony standing alone may be sufficient to support an award of benefits under the **Workers' Compensation** Act, 820 Ill. Comp. Stat. Ann. 305/1 et seq. (2000). Medical testimony is not essential to support the conclusion that an accident caused a claimant's condition of ill-being. Circumstantial evidence can be sufficient to prove a causal nexus between an accident and the claimant's injury. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > Standards of Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

HN9 Whether a causal connection exists between a claimant's condition of ill-being and her work related accident is a question of fact to be resolved by the Industrial Commission of **Illinois,** and its resolution of the matter will not be disturbed on review unless it is against the manifest weight of the evidence. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: For Appellant: Nyhan, Pfister, Bambrick, Kinzie & Lowry, of Chicago. C. Freeman, of counsel. Chicago, **IL.**

For Appellee: Cullen, Haskins, Nicholson & Menchetti, of Chicago. Jose M. Rivero, of counsel. Chicago, **IL.**

JUDGES: Honorable John T. McCullough, P.J., Honorable Thomas E. Hoffman, J., Honorable Thomas E. Callum, J., Honorable William E. Holdridge, J., and Honorable Richard P. Goldenhersh, J., concur. JUSTICE HOFFMAN delivered the opinion of the court. McCULLOUGH, P.J., CALLUM, HOLDRIDGE, and GOLDENHERSH, JJ., concur.

OPINION BY: Thomas E. Hoffman

OPINION

[74]** **[*907]** JUSTICE HOFFMAN delivered the opinion of the court:

The **University** of **Illinois (University)** appeals from a decision of the Circuit Court of Cook County which confirmed a decision of the Industrial Commission (Commission) [1] awarding benefits pursuant to the **Workers' Compensation** Act (Act) (820 ILCS 305/1 *et seq.* (West 2000)) to **Nadine** Burnes, the claimant. For the reasons which follow, we affirm.

FOOTNOTES

1 Effective January 1, 2005, the name of the Industrial Commission was changed to the "**Illinois Workers' Compensation** Commission." However, because the Industrial Commission was named as such when the instant cause was originally filed, we will use this name for purposes of consistency.

[*2]** The following factual recitation is taken from the evidence presented at the arbitration hearing.

In August of 1999, the claimant suffered from internal derangement of the right knee with a torn medial meniscus and underwent arthroscopic surgery, consisting of a partial meniscectomy and a partial synovectomy. The records of Dr. Upendra Patel, the surgeon who performed the August 1999 surgery, reflect that, as of **[**75]** September 13, 1999, the claimant's surgical wound had healed well and that she was "doing much better." Dr. Patel's progress note states that he advised progressive activity but no kneeling.

In approximately October 1999, the claimant was employed by the **University** as a nurse-midwife. On October 10, 2000, the claimant was seen by Dr. Keith R. Pitchford, complaining of increasing pain in her **[*908]** left knee. Dr. Pitchford's note of that visit indicates that an MRI of the claimant's left knee revealed a posterior medial meniscus tear. Dr. Pitchford recommended arthroscopic surgery to repair the tear. On October 12, 2000, the claimant underwent arthroscopic surgery on her left knee, consisting of a partial meniscectomy and a synovectomy. She returned to work in November 2000.

[*3]** The claimant testified that, on December 18, 2000, at approximately 8:30 a.m., she parked her car on the third floor of the **University's** parking structure in an area designated for employees. She exited her vehicle carrying her purse, a bag containing three books, and a crock-pot of food for a mandatory monthly midwife service meeting she was to attend. The claimant testified that she proceeded toward a walkway that passed over the street and connected the third floor of the parking structure with the second floor of the outpatient care facility of the **University's** hospital. According to the claimant, as she passed through the doorway between the parking structure and the walkway, she tripped on a metal **threshold** and twisted her right knee. The claimant described the object on which she tripped as a metal strip approximately 12 inches wide which "goes up on an angle" and is about three inches high in the middle. She stated that she felt pain instantly. Nevertheless, the claimant went to the scheduled midwife meeting. She testified that, while she was at the meeting, she placed ice on her knee and kept her leg elevated. At approximately 12:00 p.m., the claimant left the meeting early **[***4]** and went to the **University's** hospital emergency room.

The records of the claimant's emergency room visit were received in evidence. Karen Harrer, a triage nurse, recorded a history stating that the claimant complained "of low back pain and

right medial/posterior knee pain after slipping on ice today." The claimant, however, denied having told Harrer that she slipped on ice. A hand written note contained within the emergency room records states that the claimant tripped coming to the "OCC" building and twisted her right knee and back.

At approximately 1:30 p.m. on December 18, 2000, while the claimant was still in the emergency room, she reported the incident to a **University** police officer. The officer's report states that, as the claimant "was walking from the D-1 parking structure into the 948 Building 2nd floor walkway[,] *** she tripped over the metal floor plate with the door that separates D-1 and the 948 walkway." The report also states that the claimant did not fall but, rather, twisted her right knee. The officer noted that he inspected the accident scene and found no abnormality in the area of the doorway.

While the claimant was at the emergency room, x-rays were taken **[***5]** **[*909]** of her right knee which showed early osteoarthritic changes but no evidence of a fracture. According to the emergency room records, the claimant was diagnosed with a low back strain and a knee injury. She was given Tylenol, advised to call for a follow-up appointment, and discharged.

Two or three days after the incident, the claimant sought follow-up care with her family physician, Dr. Michael Foreit. Dr. Foreit commenced a course of conservative **[**76]** treatment, consisting of pain medication and rest. She visited Dr. Foreit four or five times before he referred her to Dr. Pitchford.

Dr. Pitchford ordered an MRI of the claimant's right knee which was performed on April 4, 2001. A report of that scan suggests a "complex tear involving the medial attachment of the posterior horn of the medial meniscus[,]" a complete tear of the anterior cruciate ligament, and a small to moderate amount of joint effusion.

When the claimant visited Dr. Pitchford on April 17, 2001, she complained of pain in her right knee. Dr. Pitchford diagnosed a medial meniscus tear and recommended physical therapy.

Dr. Pitchford's record of the claimant's visit on May 18, 2001, states that she had been experiencing **[***6]** pain in her right knee, since she injured it at work. He noted that the claimant was starting to have "tenderness" laterally which she did not have before. According to the report, the claimant had "patellofemoral symptoms." Dr. Pitchford recommended arthroscopy and a home exercise program.

On September 13, 2001, the claimant underwent arthroscopic surgery on her right knee, consisting of a partial synovectomy with a medial meniscus repair and a debridement of the "ACL." Following the surgery, the claimant remained off of work until November 5, 2001, when she returned to her duties as nurse-midwife. At the arbitration hearing, the claimant testified that she saw Dr. Pitchford periodically following her surgery; the last time being November 26, 2001.

The claimant testified that, from the time that she last saw Dr. Patel on September 13, 1999, until December 18, 2000, she "didn't have any problems" with her right knee. On July 17, 2003, the date of the arbitration hearing, the claimant stated that her right knee and leg get stiff when she sits for prolonged periods of time, she experiences pain after working longer than 8 hours or standing in certain positions, and she has swelling **[***7]** and pain after exercise. She admitted, however, that she had not sought or received treatment for her right knee since she last saw Dr. Pitchford on November 26, 2001.

Following the hearing, the arbitrator issued a decision denying the claimant benefits under the Act, finding both that she failed to prove **[*910]** that she sustained accidental injuries on December 18, 2000, arising out of and in the scope of her employment with the **University** and that her current condition of ill-being is not causally related to the injuries she sustained on December 18, 2000.

The claimant filed a petition for review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission reversed the arbitrator and found that the claimant sustained accidental injuries arising out of and in the course of her employment with the **University** on December 18, 2000, and that those accidental injuries are causally related to her current condition of ill-being. The Commission awarded the claimant temporary total disability benefits for a period of 7 4/7 weeks, permanent partial disability benefits for a period of 50 weeks by reason of the 25% loss of use of her right leg, and ordered the **University [***8]** to pay $ 16,586.63 for medical expenses incurred by the claimant.

The **University** filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

For its first assignment of error, the, **University** argues that the Commission's finding that the claimant sustained accidental injuries arising out of her employment on December 18, 2000, is against the **[**77]** manifest weight of the evidence. It asserts that, at the time of her injury, the claimant was not exposed to a risk greater than that to which the general public was exposed.

HN1An employee's injury is compensable under the Act only if it arises out of and in the course of the employment. 820 ILCS 305/2 (West 2000). 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, 137 Ill. Dec. 658 (1989). In this case, the **University** admits in its brief that injuries sustained while walking to one's place of employment from an attached garage are sustained in the course of the employment. **[***9]** Its argument addresses the "arising out of" component.

HN2Whether an injury arose out of a claimant's employment is a question of fact to be resolved by the Commission and its finding in this regard will not be set aside on review unless it is against the manifest weight of the evidence. *Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 885, 725 N.E.2d 759, 244 Ill. Dec. 286 (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, 169 Ill. Dec. 390 (1992).

HN3Arising out of the employment refers to the origin or cause of a claimant's injury. As the Supreme Court held in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 133 Ill. Dec. 454 (1989):

> **[*911]** ***HN4***"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. [Citations.] Typically, an injury arises out of one's employment if, at the time **[***10]** of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. [Citation.] A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. [Citations.]"

In addition, ***HN5***an injury arises out of the employment if the claimant was exposed to a risk of harm beyond that to which the general public is exposed. *Brady v. L. Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 161 Ill. Dec. 275 (1991).

The claimant testified that, immediately prior to her injury, she parked her vehicle in the

University's parking structure in an area designated for employees. However, contrary to the Commission's finding, there is no evidence in the record that the claimant was ordered to park in that particular area of the structure. This fact distinguishes this case from the facts present in *Homerding v. Industrial Comm'n*, 327 Ill. App. 3d 1050, 765 N.E.2d 1064, 262 Ill. Dec. 456 (2002). **[***11]** However, this case does not merely involve the risks inherent in walking across a **threshold** as the **University** asserts.

The claimant testified that she tripped on a metal strip approximately 12 inches wide and about 3 inches high located in the doorway of the walkway connecting the third floor of the **University's** parking structure with the second floor of the hospital's outpatient care facility. The **University** contends, however, that the claimant's testimony in this regard lacks credibility and is contradicted by Harrer **[**78]** who testified in support of the emergency room record, stating that the claimant reported that she slipped on ice, and the **University** police officer who reported that he found no abnormality in the area where the claimant stated that she tripped.

HN6It is the function of the Commission to judge the credibility of witnesses and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 38 Ill. Dec. 133 (1980). The Commission found that the claimant tripped over the metal strip as she testified and that the height of the strip constituted a hazardous condition. Contrary to the **University's** assertion, we do not find **[***12]** the claimant's testimony so patently unbelievable that the Commission's reliance thereon is clearly erroneous. The claimant's version of the events leading to her injury, although contradicted by the entry in the emergency room record **[*912]** made by Harrer, is consistent with the history she gave to the police officer at approximately the same time. Additionally, with the exception of the history recorded by Harrer, there is nothing contained within any of the claimant's other medical records which is inconsistent with her testimony concerning the cause of her fall.

The walkway where the claimant was injured connects the third floor of the **University's** parking structure where the claimant parked in an area designated for employees and the second floor of the hospital's outpatient care facility. The Commission could reasonably infer, therefore, that the walkway was a usual access route from the area of the parking facility designated for employees and the hospital.

HN7When, as in this case, an injury to an employee arriving for work takes place in an area of the employer's premises which constitutes a usual access route for employees and is caused by some special risk or hazard located thereon, **[***13]** the "arising out of" requirement of the Act is satisfied. *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App. 3d 486, 491, 812 N.E.2d 401, 285 Ill. Dec. 581 (2004). We conclude, therefore, that the Commission's finding that the claimant sustained accidental injuries arising out of and in the course of her employment with the **University** on December 18, 2000, is not against the manifest weight of the evidence.

Next, the **University** argues that the Commission's finding that the accidental injuries sustained by the claimant on December 18, 2000, are causally related to her current condition of ill-being is against the manifest weight of the evidence. According to the **University,** the claimant's pre-existing right knee condition and her failure to support her claim with any expert medical causation testimony "clearly shows that *** [she] has not met her burden of proving a causal relationship between her alleged accident and her condition of ill-being." We disagree.

HN8A claimant's testimony standing alone may be sufficient to support an award of benefits under the Act. *Seiber v. Industrial Comm'n*, 82 Ill. 2d 87, 97, 411 N.E.2d 249, 44 Ill. Dec. 280 (1980). **[***14]** Medical testimony is not essential to support the conclusion that an accident caused a claimant's condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 442 N.E.2d 908, 66 Ill. Dec. 347 (1982). Circumstantial evidence can be sufficient to prove a causal nexus between an accident and the claimant's injury. *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96-97, 631 N.E.2d 724, 197 Ill. Dec. 502 (1994).

As the **University** correctly notes, the record reflects that the claimant had a pre-existing right knee injury which necessitated surgery in August 1999, and that she suffered from osteoarthritic changes in **[**79]** the knee. Nevertheless, the claimant testified that she had **[*913]** no "problems" with her knee from the time that she last saw Dr. Patel on September 13, 1999, and the date of her accident on December 18, 2000. She stated that, at the time that she began working for the **University,** she was not experiencing any stiffness or pain in her right knee. Further, Dr. Patel's September 13, 1999, note states that the claimant's surgical wound had healed and she was doing much better. Nothing in the record suggests **[***15]** that the claimant was being treated for any right knee condition from the date that she last saw Dr. Patel and the date of the accident which is the subject of this case, a period of 15 months. The record also reflects a continuous course of treatment from the date of the claimant's accident on December 18, 2000, until November 26, 2001, including arthroscopic surgery on her right knee on September 13, 2001.

When the **University** hired the claimant, it took her as it found her. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 199, 775 N.E.2d 908, 266 Ill. Dec. 836 (2002). The fact that the claimant had a pre-existing right knee condition does not mandate the conclusion that her pre-existing condition was the sole cause of her current condition of ill-being, especially in light of the fact that the **University** offered no expert medical evidence in support of such a conclusion.

HN9Whether a causal connection exists between a claimant's condition of ill-being and her work related accident is a question of fact to be resolved by the Commission, and its resolution of the matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205-06, 797 N.E.2d 665, 278 Ill. Dec. 70 (2003). **[***16]** In this case, the claimant's testimony and the records of her medical treatment provide sufficient circumstantial evidence to support the Commission's conclusion that her current condition of ill-being is causally related to her accident on December 18, 2000. Consequently, we cannot find that the Commission's holding in this regard is against the manifest weight of the evidence.

For the foregoing reasons, we affirm the judgment of the circuit court which confirmed the Commission's decision awarding the claimant benefits under the Act.

Affirmed.

McCULLOUGH, P.J., CALLUM, HOLDRIDGE, and GOLDENHERSH, JJ., concur.