ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE DECISION OF ARBITRATOR

Ruth Lindquist
Employee/Petitioner

Case # 06 WC 113

v.

Metropolitan Water Reclamation District
Employer/Respondent

On Jan 24, 2007, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

A copy of this decision is mailed to the following parties:

45 0125 06 WC 113
COHN LAMBERT RYAN & SCHNEIDER
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CHICAGO, IL 60606

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NAPERVILLE, IL 60563

STATE OF ILLINOIS)
)
COUNTY OF Cook)

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Ruth Lindquist,
Employee/Petitioner

v.

Metropolitan Water Reclamation District,
Employer/Respondent

Case # **06** WC **00113**

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party.

The matter was heard by the Honorable **Gerald Jutila**, arbitrator of the Commission, in the city of **Chicago**, on October **31, 2006**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues listed below, and attaches those findings to this document.

DISPUTED ISSUES

C. ☒ Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?

F. ☒ Is the petitioner's present condition of ill-being causally related to the injury?

J. ☒ Were the medical services that were provided to petitioner reasonable and necessary?

K. ☒ What amount of compensation is due for temporary total disability?

L. ☒ What is the nature and extent of the injury?

FINDINGS

- On **November 9, 2005** the respondent **Metropolitan Water Reclamation District,** *was* operating under and subject to the provisions of the Act.
- On this date, an employee-employer relationship ***did*** exist between the petitioner and respondent.
- On this date, the petitioner ***did not*** sustain injuries that arose out of and in the course of employment.
- Timely notice of this accident ***was*** given to the respondent.
- In the year preceding the injury, the petitioner earned **$54,006.16**; the average weekly wage was **$1,038.58**.
- At the time of injury, the petitioner was **61** years of age, ***single*** with **no** children under 18.
- Necessary medical services ***have in part*** been provided by the respondent.
- To date, **$11,355.12** has been paid by the respondent for TTD and/or maintenance benefits.

ORDER

- **Petitioner's claim for compensation is denied.**

RULES REGARDING APPEALS: Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE: If the Commission reviews this award, interest of 4.96 % shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

G.D. Jutila

Gerald D. Jutila, arbitrator

January 24, 2007
Date

ICArbDec p. 2

JAN 24 2007

State of Illinois)
) SS
County of Cook)

Before the Illinois Workers' Compensation Commission

Ruth Lindquist,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 06WC00113
	)	
Metropolitan Water Reclamation District,	)	
	)	
Respondent.	)	

RIDER TO ARBITRATION DECISION

FINDINGS OF FACT

The petitioner is employed by the respondent as an Account Clerk II at the respondent's main building on Erie Street, approximately one block west of Michigan Avenue in Chicago. The majority of her work is sedentary and consists of considerable keyboarding. In addition, however, she is also responsible for filing, ordering and placing supplies and the preparation of bank deposits for the respondent of miscellaneous income the respondent receives including the presentation of these revenues for deposit to the Chase Bank branch on Michigan Avenue one block south of Erie. These deposits were taken to Bank One two to three times a week by the petitioner.

At the time of the occurrence she was 61 years of age and had been employed by the respondent for 13 years. She is a charming lady who testified fully and frankly regarding the circumstances of her injury. On November 9, 2005, while the petitioner was making one of these trips to Chase Bank and while walking eastbound on Erie street, in a route that was totally consistent with her intended destination, she stumbled, fell, and sustained serious injuries to both wrists.

Petitioner's Exhibits 1, 2 and 3 are pictures of the site and area where the petitioner stumbled and fell. The site in question is a combination city sidewalk and driveway for shipping

and receiving to the Crate & Barrel store on Michigan Avenue. The pictures portray and the petitioner testified to an unnatural slope or dip in the sidewalk so as to make the driveway accessible from the street for incoming trucks. When the petitioner stepped into this considerable dip or slope as portrayed in the pictures she fell forward, breaking her fall with her hands.

The emergency room records of that date for treatment rendered at Northwestern Memorial Hospital reflect a comminuted fracture of the left distal radius with distraction of the fracture fragments and volar angulation of the distal fracture fragments and a similar fracture of the distal right radius with distraction and volar angulation. Both areas of trauma demonstrate soft tissue swelling and both fractures involve the articular surfaces. (See PX#4, page 16).

The emergency room physicians applied plaster casts from the wrist to just below each armpit, then taking post reduction x-rays through the casts to demonstrate improvement in the comminuted impacted interarticular distal radial fractures. One x-ray view demonstrated resistant displacement of one of the distal fracture fragments. (See PX#4, page 20).

The petitioner then sought the services of Dr. John McClellan of Oak Lawn, Illinois. The history given to the emergency room (i.e.) injured on concrete ramp and those given to Dr. McClellan the following day, i.e., fell on incline, are consistent with the her testimony and the pictures of the site in question.

Dr. McClellan originally recommended application of long plaster arm casts to just below the elbow so as to afford some elbow flexion and surgery to the left wrist to apply an external fixation device. On November 14, 2005 the comminuted interarticular fracture of the left distal radius was surgically addressed for what was characterized by Dr. McClellan within his operative report as a very comminuted left distal radius fracture. (See PX#5).

Two office visits later on December 1, 2005 new x-rays demonstrate that the articular right distal radius fracture has titled anteriorly approximately 15 degrees so Dr. McClellan proceeded with external fixation for the comminuted interarticular right distal radius fracture to address the angulation of the petitioner's dominant right hand and arm. (See PX#5).

The external fixator was removed from the left arm and wrist on December 16, 2005 and the right arm external fixation device was removed on December 27, 2005 with the petitioner thereafter undertaking physical therapy until her release for work effective March 6, 2005. (See PX#8 and 9). Dr. McClellan's work release for March 6, 2006 is authored on February 27 at which time he discharged the petitioner with the admonition to schedule a return visit if her symptoms persist or increase.

The petitioner indeed returned to work as directed but scheduled a post discharge office visit with Dr. McClellan on June 22, 2006 due to persistent symptoms. Dr. McClellan discussed with her the increased chance of developing carpal tunnel syndrome and post traumatic arthritis, especially in the non-dominant left wrist which was the worse of the two fracture sites.

The petitioner complains of stiffness, achiness, pain with weather change, tenderness, weakness and an unwillingness to rely upon the strength of her hands as evidenced by a bicycle fall where she avoided the normal reflex of using her hands to break her fall, pulling them away and landing on her knee.

CONCLUSION OF LAW

Did an accident occur that arose out of and in the course of petitioner's employment by the respondent?

The parties agree that petitioner's accident occurred in the course of her employment by the respondent. However, respondent argues that petitioner is not entitled to compensation because her injury did not arise out of her employment. It argues that injuries occurring off of 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, (emphasis added by the arbitrator). Respondent cites Best Foods v. Industrial Commission 173, Ill.Ap.3d 1066, (1993) and Hopkins v. Industrial Commission, 196 Ill.App.3d 347 (1990) in support of its position that petitioner must also show she was exposed to a risk greater than that of the general public.

Petitioner argues that in order to recover she is only required to prove that the task she was performing at the time of her injury was incidental to her employment. In support thereof she relies on certain language found in Caterpillar Tractor Company vs. Industrial Commission, 129 Ill. 2d 52 (1989). The Supreme Court wrote in Caterpillar:

> 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 accident 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 (sic) 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. (At page 58 – citations omitted).

She then points to the very next paragraph of Caterpillar where the Illinois Supreme Court wrote: "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," (emphasis was added by petitioner's attorney). Therefore, petitioner argues there is no requirement that both tests be satisfied, rather it is either/or.

The arbitrator notes that immediately after the above language, the Court qualified the language relied on by petitioner: "However, if the injury results from a hazard to which the employee would have been equally exposed apart from the employment, . . . it is not compensable."

Petitioner argues that there is no doubt that had she sustained the same trip and fall injury on her employer's immediate premises where a similar defect was present as that which actually occasioned her fall on the street there would have been no dispute as to accident. She contends it would be a mistake of law to confuse being sent out into the public with the requirement that an employee demonstrate a risk increased beyond the general public's risk.

Petitioner also argues that her trip to the bank for the purpose of depositing receipts is clearly incidental to her employment. Therefore, the injury had its origins in the employment, and there is no need to demonstrate increased risk. To rule otherwise, she argues, would create the

anomalous situation where employees injured on their company's immediate premises are granted a wider and more liberal spectrum of compensability than would employees who are sent into the public way and suffer from the same mechanics of injury. The arbitrator agrees that the activity engaged in by petitioner at the time of her fall was clearly incidental to and required by her employment. However, the arbitrator also concludes that the hazard that occasioned petitioner's fall is a risk common to the general public inasmuch as it occurred on a public sidewalk.

The arbitrator also agrees with petitioner's counsel that the application of the law as it exists creates an anomalous situation. However, the arbitrator is required to follow existing law even when he disagrees with that law or the results that follow from the application of that law. The arbitrator has also thoroughly reviewed the evidence in search of facts that would support a finding that petitioner was exposed to a risk to a greater degree than the general public. He has found none. And, petitioner's attorney has not pointed to any facts that tend to show petitioner was exposed to a risk to a greater degree than the general public.

It is the conclusion of this arbitrator that the respondent has correctly stated the law as it applies to this factual situation and that in order to recover the petitioner must also prove that she was exposed to the hazard to a greater degree than the general public. Petitioner has failed to prove a greater degree of exposure to the hazard. Therefore, the arbitrator concludes that petitioner has failed to prove that an accident occurred that arose out of her employment by the respondent. Regretfully, petitioner's claim for compensation must be denied. All other issues are moot.

*8 IWCC 492; 2008 Ill. Wrk. Comp. LEXIS 634, **

RUTH LINDQUIST, PETITIONER, v. METROPOLITAN **WATER RECLAMATION DISTRICT,** RESPONDENT.

No. 06WC 113

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

8 IWCC 492; 2008 Ill. Wrk. Comp. LEXIS 634

May 22, 2008

CORE TERMS: wrist, driveway, street, fracture, bilateral, deposit, doctor, performing, increased risk, walked, knee, curb, pain, dip, exposed, temporary total disability, right hand, left hand, comminuted, accidental, stumbled, fixation, surgery, crossed, marked, route, purse, trip, general public, compensable

JUDGES: Molly C. Mason; Paul W. Rink

OPINION: [*1]

CORRECTED DECISION AND OPINION ON REVIEW

Petitioner appeals the Decision of Arbitrator Jutila finding that Petitioner failed to prove that her accidental fall of November 9, 2005 arose out of her employment. The parties agree that the fall occurred in the course of Petitioner's employment.

The issues on review are accident, causal connection, medical, temporary total disability and permanency.

After considering the entire record, the Commission reverses the Decision of the Arbitrator and finds that Petitioner's accidental fall of November 9, 2005 arose out of her employment, that Petitioner established a causal connection between said accidental fall and her bilateral wrist condition of ill-being, that Petitioner was temporarily totally disabled from November 10, 2005 through March 5, 2006, a period of 16 4/7 weeks, with Respondent receiving credit for the $ 11,355.12 in benefits it paid prior to arbitration (Arb Exh 1), that Petitioner is entitled to $ 4,358.15 in reasonable and necessary medical expenses (PX 10), with Respondent receiving

credit for any amounts paid toward said expenses prior to trial pursuant to the parties' stipulation (Arb Exh 1) and that Petitioner is permanently **[*2]** partially disabled to the extent of 35% use of her right hand and 35% use of her left hand under Section 8(e).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a 61-year-old right-handed (T. 24) accounting clerk, testified that she has worked for Respondent for thirteen years. T. 9. She previously worked as an accounting manager for Concordia Bank for about twenty years. T. 10-11.

2. Petitioner testified that most of her work at Respondent is clerical and sedentary in nature. She performs keyboarding, filing, ordering, etc. She is also responsible for preparing deposit slips for received checks and depositing those checks at Respondent's bank on Michigan Avenue. The bank is about 1 1/2 blocks away from Respondent's office on Erie Street. T. 14. She testified that she regularly travels to the bank to make deposits two to three times per week. T. 13.

3. On November 9, 2005, at about 3:00 PM (T. 23), Petitioner left Respondent's office and headed toward the bank with the intention of depositing checks into Respondent's account. She walked east on Erie toward Michigan Avenue, crossed Erie mid-block (T. 36) and then stumbled while walking up a driveway on **[*3]** the east side of a Crate & Barrel Store. She fell forward (T. 22), tried to break her fall with her hands and fractured both of her wrists. T. 15.

4. Petitioner looked at photographs marked as PX 1, 2 and 3 and identified the driveway where she fell. She testified that she stumbled where the driveway first "dips". T. 16-17. At the time of her fall there was no yellow stripe painted on the driveway. T. 16. She marked an "X" on PX 2 to show the approximate point where she tripped. T. 17. She had previously seen trucks coming in and out of this driveway. The driveway "dips" about six inches. T. 18. Petitioner indicated that she went back to the scene of her fall at some point after the accident and noticed a sign saying "caution, high curb". This sign is shown in the photograph marked as PX 3. T. 19. She had never noticed this sign before her fall. T. 19.

5. Petitioner testified that she was carrying her purse (which contained the checks and deposit slips) when she fell. T. 22. A co-worker happened to be across the street at that time. He came to her aid and took her into the store. T. 22. She was then taken to Northwestern Memorial Hospital by ambulance. The Emergency Room physician's **[*4]** handwritten note reflects that she complained of bilateral wrist pain after " (illegible) feet on concrete ramp, falling forward on outstretched hands". Bilateral wrist X-rays demonstrated comminuted fractures of the distal radii with volar angulation of the fracture fragments. A consulting orthopedic surgeon, Dr. Stewart, interpreted the films as showing a "badly comminuted intraarticular distal radius fracture with volar Barton's fracture" on the left and a "Smith type fracture with intraarticular extension" on the right. The fractures were reduced under conscious sedation and bilateral long arm casts were then applied. PX 4.

6. After being discharged from the Emergency Room, Petitioner followed up with Dr. John McClellan, an orthopedic surgeon, on November 10, 2005. T. 23-24. Petitioner completed a workers' compensation history sheet at the doctor's request and indicated that she was "going to bank to make company deposit" when she crossed Erie and "fell on incline at Crate & Barrel". PX 5. Petitioner complained of bilateral wrist pain, worse on the left. Dr. McClellan took additional X-rays and recommended external fixation surgery for the left wrist and recasting with **[*5]** follow-up X-rays for the right wrist. When the doctor operated on Petitioner's left wrist on November 14, 2005 he described the fracture as "very comminuted". PX 6. Petitioner continued to see Dr. McClellan postoperatively. On December 1, 2005 the doctor obtained new right wrist X-rays and noted that the articular surface had tilted anteriorly about fifteen degrees. He then recommended external fixation surgery for the right wrist. He performed this

procedure on December 2, 2005 (PX 7) and subsequently removed the fixation devices on December 16 and 27, 2005. T. 27. PX 8-9. Petitioner underwent therapy for both wrists thereafter. On February 27, 2006 Petitioner returned to the doctor and complained of bilateral wrist pain as well as numbness in her left wrist. On examination, the doctor noted no tenderness or swelling in either wrist and flexion/extension to 30 degrees. He released Petitioner to her sedentary job on March 6, 2006 and told her to return to him as needed. Petitioner testified that she returned to him on June 22, 2006 because she was still experiencing pain and stiffness in her left wrist and occasional aching in her right wrist. She wanted to know if she was at risk **[*6]** for carpal tunnel and/or arthritis. The doctor's examination findings were the same as on March 6th except that he found flexion/extension on the right to be 45 degrees. He noted that Petitioner "has a slightly greater chance of carpal tunnel syndrome and post-traumatic arthritis, left wrist especially". He instructed Petitioner to return to him as needed. PX 5.

7. Petitioner testified that her wrists are stiff when she wakes up. She uses **water** to "loosen them up". By the end of each day they are "very stiff". T. 30. She has difficulty opening jars and experienced arm stiffness after doing yard work for three hours (two hours one day and one hour the next) the weekend before the hearing. Her wrists ache when the weather is damp. T. 31. She took Aleve before and after doing the yard work. T. 31. She then clarified that she takes Aleve every morning because it helps with the aching. T. 32. Her wrists ache when she does a lot of keyboarding. She also uses "blue mineral ice", an over-the-counter salve. T. 32-33. She is also "guarded" with respect to her hands. She rode a bicycle three or four weeks before the trial and lost her balance. She started to fall and was going to catch herself **[*7]** with her hands but then pulled back. As a consequence, she fell awkwardly and ended up spraining a muscle in her knee. She explained that she avoided catching herself with her hands because she lacked confidence that her wrists would support her and wanted to avoid reinjury. T. 33-34. She did not reinjure her wrists in this incident but did go back to Dr. McClellan for her knee. He diagnosed a knee sprain and gave her a brace. T. 34.

8. Under cross-examination, Petitioner testified that Respondent's building is at 100 East Erie and that the Crate & Barrel store is south and east of this building. T. 36. She had shopped at this store before the accident and was aware that the driveway was used for deliveries. T. 37. The caution sign was behind the spot where she fell. T. 37. After she crossed Erie, she walked up the flat part of the driveway. She thought that she lost her footing but was not sure. She acknowledged that there was no broken pavement in the area where she fell. Respondent did not direct her route. T. 38. She had previously walked in the area during lunch breaks and while traveling to and from work. T. 39. She did not trip on the raised curb shown in the photo(s). T. 41. **[*8]** She last saw Dr. McClellan for her hands in June. She had no scheduled return visit other than a follow-up for her knee. She was still performing the same job she performed before the accident. T. 42.

On redirect, Petitioner confirmed that the bank is only a couple of blocks from Respondent's building. She was taking the route that she perceived to be the most direct. T. 42-43. She tripped on the dip in the driveway. T. 43.

9. Petitioner offered a bill in the amount of $ 4,358.15 from Ingalls Hospital for surgery performed on December 16, 2005. PX 10. Respondent raised only a liability objection to this bill. T. 44.

10. Respondent did not call any witnesses or offer any exhibits.

11. The Arbitrator found that Petitioner's accident did not arise out of her employment. He acknowledged that Petitioner was required to make regular trips to the bank on behalf of Respondent but found, citing Caterpillar Tractor Company v. Industrial Commission, 129 Ill.2d 52, 541 N.E.2d 665, 133 Ill.Dec. 454 (1989), that these trips did not place her at an increased risk of injury.

On review, Petitioner argues that a claimant can prove "arising **[*9]** out of" by showing either that he was performing a required or beneficial task or that he was subject to an increased risk of injury. She maintains that the Arbitrator erred in requiring her to prove both of these elements.

The Commission agrees and notes that Petitioner's argument finds support in Homerding v. Industrial Commission, 327 Ill.App.3d 1050, 1068, 765 N.E.2d 1064, 262 Ill.Dec. 456 (1st Dist. 2002). In Homerding, the Court reversed the Commission's denial of benefits and found that the claimant's fall arose out of her employment because she "fell while working". The Court went on to apply an "increased risk" analysis but clearly found the claim compensable before doing so. In the instant case, it is undisputed that Petitioner fell while performing a required task. It is this fact which distinguishes the instant case from Caterpillar and Best Foods v. Industrial Commission, 231 Ill.App.3d 1066, 596 N.E.2d 834, 173 Ill.Dec. 210 (1st Dist. 1992), a case cited by Respondent. Caterpillar involved an individual who left work for the day and injured **[*10]** his ankle after stepping off of a curb while on his way to an employee parking lot. Best Foods involved an employee who punched out and then twisted her ankle on a public sidewalk or curb while headed toward her husband's car. Petitioner, in contrast, was injured in the middle of her workday while transporting checks to Respondent's bank.

While the Commission finds it unnecessary to reach the issue of whether Petitioner was exposed to an "increased risk", it notes that the claim is also compensable under this alternative analysis. Petitioner was regularly required to traverse the streets in order to make deposits on behalf of Respondent and was thus exposed to the risk of the "dip" in the driveway with greater frequency than members of the general public. In City of Chicago v. Industrial Commission, 389 Ill. 592, 60 N.E.2d 212 (1945), the Supreme Court held that "where the proof establishes that the work of the 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 **[*11]** relation to his employment, authorizing an award". Admittedly, Petitioner walked the streets less often than the canvasser in City of Chicago. The Court specifically addressed this possibility, however, when it noted that "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", 389 Ill. at 601.

The Commission notes that Respondent relied solely on its "arising out of" defense and objected only on the basis of liability to Petitioner's treatment and claimed lost time. Arb Exh 1. Based on Petitioner's testimony and medical records, the Commission finds that Petitioner was temporarily totally disabled from November 10, 2005 through March 5, 2006, a period of 16 4/7 weeks, with Respondent receiving credit for the $ 11,355.12 in temporary total disability benefits it paid pursuant to the parties' stipulation. Arb Exh 1. The Commission further finds that Petitioner is entitled to $ 4,358.15 in reasonable and necessary medical expenses (PX 10) under Section 8(a), noting the parties' stipulation that Respondent will be entitled **[*12]** to either a direct workers' compensation credit or Section 8(j) credit to the extent that the awarded expenses were paid prior to arbitration. T. 6-7. Based on Dr. McClellan's note of June 22, 2006 (PX 5) and Petitioner's testimony concerning her ongoing complaints, the Commission further finds that Petitioner is permanently partially disabled to the extent of 35% of her right hand and 35% of her left hand under Section 8(e).

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 692.39 per week (based on the stipulated average weekly wage of $ 1,038.58, Arb Exh 1) from November 10, 2005 through March 5, 2006, a period of 16 4/7 weeks, that being the period of temporary total disability under Section 8(b), with Respondent receiving credit for the $ 11,355.12 in benefits it paid prior to trial. Arb Exh 1.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 4,358.15 in reasonable and necessary medical expenses under Section 8(a), subject to the parties' stipulation. T. 6-7.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 591.77 per week for a period of 143.5 weeks for the reason **[*13]** that the injuries sustained caused the permanent partial disability of Petitioner to the extent of 35% loss of use of the right hand and 35% loss of use of the left hand under Section 8(e).

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under Section 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

DISSENTBY: NANCY LINDSAY

DISSENT: I respectfully disagree with the Majority's Decision finding that Petitioner sustained an accident that arose out of her employment with Respondent on November 9, 2005. I would have affirmed and adopted the Arbitrator's Decision as it is well-reasoned and supported by the law and evidence. Petitioner was injured on a public street while making a random, one-time delivery. She was not required by her employer to take the route she chose. **[*14]** She testified there were no defects or debris where she fell. Furthermore, she was unsure whether she stumbled or not. While the bank deposits were in the purse Petitioner was carrying with her, there is nothing in the record to suggest the purse contributed to her fall. While her job duties took her to the place of injury that alone should not be enough to establish liability. The Petitioner was exposed to no greater risk than that of the general public and compensation should have been denied. For this reason, I dissent.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

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

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

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
Terms: **water and reclamation and district** (Edit Search | Suggest Terms for My Search)
View: Full
Date/Time: Thursday, March 17, 2011 - 1:21 PM EDT

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – LAW DIVISION
TAX AND MISCELLANEOUS REMEDIES SECTION

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, Plaintiff,	)	
v.	)	No. 08 L 050623
ILLINOIS WORKERS' COMPENSATION COMMISSION and RUTH LINDQUIST, Defendants.	)	

MEMORANDUM OF DECISION AND JUDGMENT

This is an action for judicial review of a final order of the Illinois Workers' Compensation Commission ("Commission") under Section 19(b) of the Illinois Workers' Compensation Act. 820 ILCS 305/19(b). The Commission reversed the Decision of the Arbitrator, finding that Plaintiff Ruth Lindquist's fall arose out of her employment, that there was a causal connection, that Plaintiff was entitled to temporary total disability benefits and medical expenses, and that Plaintiff was permanently partially disabled to the extent of 35% loss of use of her right hand and 35% loss of use of her left hand.

STATEMENT OF FACTS

Ruth Linquist, ("Defendant"), was employed by Metropolitan Water Reclamation District of Greater Chicago, ("Plaintiff"), as an Accounting Clerk for thirteen years. (Plaintiff's Brief [PB].2). As part of her job duties, Defendant was required to make bank deposits for Plaintiff on

average two or three times per week. (Record [R].31). Defendant would walk to the bank located 1.5 blocks south and east of her work building. (PB.2). On November 9, 2005, Defendant was walking to make a deposit at the bank when she crossed the street at mid-block and stumbled upon the sidewalk/driveway of Crate and Barrel located on the south side of Erie Street. (PB.2). She fell forward and tried to break her fall with her hands. (R.341). In doing so, she fractured both of her wrists. (R.341).

Defendant testified that there were no defects or debris on the sidewalk or driveway. (PB.2). She stated that may have lost her footing and was unsure of whether she stumbled on anything. (R.59).

Procedural History

Ruth Lindquist's claim against Metropolitan Water Reclamation District of Greater Chicago was heard before Arbitrator Gerald Julita on October 31, 2006. The Arbitrator found that Lindquist failed to prove that an accident occurred that arose out of her employment. (R.14). The Arbitrator therefore denied Lindquist's claim for compensation and ruled all other issues moot. (R.14). Lindquist filed a Timely Petition for Review to the Illinois Workers' Compensation Commission. The Commission reversed the Decision of the Arbitrator, finding (1) that Lindquist's fall arose out of her employment; (2) that there was a causal connection between the fall and her current condition of ill-being; (3) that Lindquist was temporarily totally disabled from November 12, 2005 through March 5, 2006, a period of 16 4/7 weeks, with the District receiving credit for the amount if paid in benefits prior to arbitration; (4) that Lindquist was entitled to $4,358.18 in medical expenses, with the District receiving credit for amounts already paid; (5) and that Lindquist is permanently partially disabled to the extent of 35% loss of

use of her right hand and 35% loss of use of her left hand. (R.340). Metropolitan Water Reclamation District of Greater Chicago appeals the Decision of the Commission.

ISSUES PRESENTED ON REVIEW

Whether the cited case law was wrongly interpreted by the Commission.

Whether the case law relied on by the Commission was applicable to this case.

Whether Plaintiff's due process rights were violated when the Commission failed to follow its own precedence.

Whether the work incident arose out of employment.

STANDARD OF REVIEW

The Industrial Commission ("Commission") is the ultimate decision maker in workers' compensation cases, and it is not bound by any decision made by the arbitrator. *Cushing v. Industrial Comm'n*, 50 Ill. 2d 179, 181-82, 277 N.E.2d 838 (1971). Instead, the Commission must weigh the evidence presented at the arbitration hearing and determine where the preponderance of that evidence lies. *See Steiner v. Industrial Comm'n*, 101 Ill. 2d 257, 260, 461 N.E.2d 1363, 78 Ill. Dec. 256 (1984); *Wagner Castings Co. v. Industrial Comm'n*, 241 Ill. App. 3d 584, 594, 609 N.E.2d 397, 182 Ill. Dec. 90, 182 Ill. Dec. 94 (1993) ("it is *solely* within the province of the Commission" to weigh the evidence (emphasis in original)). A reviewing court will not reverse the Commission unless its decision is contrary to law (*see Butler Manufacturing Co. v. Industrial Comm'n*, 85 Ill. 2d 213, 216, 422 N.E.2d 625, 52 Ill. Dec. 623 (1981)) or its fact determinations are against the manifest weight of the evidence (*see Shockley v. Industrial Comm'n*, 75 Ill. 2d 189, 193, 387 N.E.2d 674, 25 Ill. Dec. 798 (1979)). Fact determinations are

against the manifest weight of the evidence only when an opposite conclusion is clearly apparent that is, when no rational trier of fact could have agreed with the agency. *See D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924, 930, 693 N.E.2d 1201, 230 Ill. Dec. 450 (1998).

ANALYSIS AND DISCUSSION

Whether the Commission wrongly interpreted the cited case law

The Arbitrator stated that Defendant was required to prove that she was exposed to a greater degree of risk than the general public, and failed to do so. The Commission reversed the Decision of the Arbitrator, finding that Defendant only had to prove either (1) that she was performing a required or beneficial task or (2) that she was subject to an increased risk of injury. The Commission found for Defendant based upon the fact that she was performing a required or beneficial task. The Commission also stated it was unnecessary to reach the issue of whether Defendant was exposed to an increased risk. It did note however that if increased risk was a requirement, Defendant met that requirement by stating that she was regularly required to traverse the streets in order to make deposits on behalf of Plaintiff. (R.343).

The Commission distinguished this case from *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 541 N.E.2d 665 (1989), and *Best Foods v. Industrial Comm'n*, 231 Ill.App.3d 1066, 596 N.E.2d 834 (1st Dist. 1992), with the fact that Defendant was performing a required task of her employment in the middle of her workday. While the Defendant's incident occurred while she was working and the incidents in *Caterpillar* and *Best Foods* occurred as the employees were leaving work at the end of the day, the Court in *Caterpillar* and *Best Foods* nonetheless established the requirements of a compensable injury.

The Illinois Supreme Court stated in *Caterpillar* that "the mere fact that the duties take the employee to the place of the injury 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." 129 Ill. 2d at 63.

Illinois case law has established that injuries which 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. *Best Foods*, 231 Ill.App.3d 1066 (citing *Gray Hill, Inc. v. Industrial Comm'n*, 145 Ill. App. 3d 371, 495 N.E.2d 1030 (1986).) (emphasis added). Thus, the Commission erred in stating that a claimant can prove "arising out of" by showing either that he was performing a required or beneficial task or that he was subject to an increased risk of injury.

Thus, the decision of the Commission is contrary to law, as it applied the wrong standard for compensable injuries. Plaintiff was required to establish that (1) her presence at the site of the fall was required in the performance of her duties and (2) she was exposed to a risk common to the general public but to a degree greater than other persons.

Case law relied on by the Commission

Plaintiff argues that the case law relied on by the Commission is inapplicable to the case at bar. The Commission relied on *Homerding v. Industrial Comm'n*, 327 Ill. App. 3d 1050 (1st Dist. 2002), and *City of Chicago v. Industrial Comm'n*, 389 Ill. 592 (1945). The Commission stated in its decision that the Court in *Homerding* applied an increased risk analysis, "but clearly found the claim compensable before doing so." However, the facts of *Homerding* are distinguishable from the case at bar. In *Homerding*, the claimant fell on the employer's property, and thus the principle from *Best Foods* does not apply. Also, the claimant slipped on ice, a

hazardous condition, which caused her to fall. In *City of Chicago*, the claimant worked as a license investigator and was required to walk city streets. The claimant stubbed his toe stepping up to the sidewalk which was higher than usual due to subway construction. The Court stated that the risks of the street may, depending upon the circumstances, become risks of the employment. *City of Chicago*, 389 Ill. at 601. As in *Homerding*, the claimant in *City of Chicago* was faced with a hazard and was injured by that hazard. In this case, Defendant was not faced with a hazard, as she testified that there were no defects in the sidewalk or driveway. Therefore, reliance on *Homerding* and *City of Chicago* is misplaced.

Whether Plaintiff's due process rights were violated

Plaintiff argues that its due process rights to a fair and equitable hearing were violated when the Commission failed to follow its own precedent in deciding this case. Plaintiff cites multiple Commission decisions that it claims are directly on point with the factual situation present in the case at hand. However, the Commission is not bound by its own prior decisions. "The conclusions of law set out in such decisions shall be regarded as precedents by arbitrators for the purpose of achieving a more uniform administration of this Act." 820 ILCS 305/19(e). The Act however does not state that the Commission is bound by its decisions in previous cases or that previous conclusions of law are precedent for Commissioners. Therefore, Plaintiff's due process rights were not violated when the Commission did not follow its previous decisions.

Whether the incident arose out of the employment

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. *Caterpillar*, 129 Ill. 2d 52. The phrase "in the course of" refers to the time, place, and circumstances under which the accident occurred. *Id.* 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. *Id.* 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. *Id.* If an employee is exposed to a risk common to the general public to a greater degree than other persons, the accidental injury is also said to arise out of his employment. *Id.*

Defendant fell while walking down Erie Street to make bank deposits for Plaintiff. 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. *Best Foods*, 231 Ill.App.3d 1066. The Commission stated that if increased risk was a requirement, Defendant met the requirement by stating that she was regularly required to traverse the streets in order to make deposits on behalf of Plaintiff.

The Commission found that Defendant was exposed to the risk of the "dip" in the driveway with greater frequency than members of the general public because she was required to traverse the streets to make deposits for Plaintiff. While she was required to walk the deposits to the bank, Defendant testified that she was not required by Plaintiff to take this specific route. She also stated that she was familiar with the area, both as her normal route to the bank for deposits and personally as a frequent patron of the area. She stated that there was no defect in the curb or driveway. She stumbled as she walked up the driveway as she crossed the street mid-block.

This Court finds that Defendant was not exposed to a risk to a greater degree than the general public. Therefore, the Commission's decision that she was exposed to a greater risk is against the manifest weight of the evidence and contrary to law.

CONCLUSION

For the reasons mentioned above, this Court finds the Commission's decision contrary to law and against the manifest weight of the evidence.

IT IS THEREFORE ORDERED:

The Commission's decision is reversed.

Assoc. Judge James Tolmaire, III
AUG 24 2009
Circuit Court - 1916

Date:_____ Enter:_____

Elmer J. Tolmaire, III
Associate Judge

Workers' Compensation
Commission Division
Filed: February 22, 2011

No. 1-09-2546WC

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

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, Appellee, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (RUTH LINDQUIST, Appellant).	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY No. 07 L 50623 HONORABLE ELMER JAMES TOLMAIRE, III, JUDGE PRESIDING.

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

OPINION

The claimant, Ruth Lindquist, appeals from an order of the circuit court finding that the injuries which she sustained on November 9, 2005, died not arise out of her employment with the Metropolitan Water Reclamation District of Greater Chicago (the District), and reversing the decision of the Illinois Workers' Compensation Commission (Commission) awarding her benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)). For the reasons which follow, we reverse the judgment of the circuit court and reinstate the decision of the Commission.

The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on October 31, 2006.

The 61-year-old claimant testified that she has been employed as an accounting clerk for the District for 13 years. Her primary job duties are clerical in nature and include using a computer and keyboard, ordering and moving supplies, and filing. She is also responsible for preparing deposit slips for checks received by the District and for depositing those checks in the account held by the District at Chase Bank on Michigan Avenue. The bank is about 1½ blocks south and east of the District's office, which is located at 100 East Erie Street. The District does not direct what route she takes when making such deposits, and she typically walks east on Erie and then south on Michigan, which is the route she perceives to be the most direct. The claimant testified that she regularly travels to the bank to make deposits two to three times per week, depending on the volume of checks received.

At approximately 3 p.m. on November 9, 2005, the claimant left her office and began walking toward the bank to deposit checks in the District's account. She walked east on Erie toward Michigan Avenue, crossed Erie in the middle of the block, and then stumbled while walking up an inclined driveway that had a "dip" of about six inches. According to the claimant, she tripped or lost her footing on the "dip" in the driveway and fell forward. She tried to break her fall with her hands and fractured both of her wrists. The claimant acknowledged that she did not fall as a result of any

debris or defect in the pavement, nor did she trip on the high curb.

The claimant stated that she was taken by ambulance to the emergency room at Northwestern Memorial Hospital, where she underwent bilateral wrist x-rays that demonstrated she had sustained comminuted fractures of the distal radii with volar angulation of the fragments. The emergency room doctors applied long-arm casts that extended from her hands to just below her shoulders. The following day, she saw Dr. John McClellan, an orthopedic surgeon, who replaced the long-arm casts with shorter ones. Dr. McClellan also scheduled an external-fixation surgery for her left wrist, which was performed on November 14, 2005. He then performed the same procedure on her right wrist on December 2, 2005. She subsequently underwent physical therapy and was ultimately released to return to work on March 6, 2006. At the hearing, the claimant stated that she has pain and stiffness in both of her wrists, but continues to perform the same functions she had before the accident.

At the conclusion of the hearing, the arbitrator found that, although the claimant was injured while performing a task that was required by her work, the accident did not arise out of her employment because she had not established that her job duties exposed her to a risk greater than that faced by the general public. Accordingly, the arbitrator found that the claimant was not entitled to benefits under the Act.

The claimant sought review of the arbitrator's decision before the Commission. With one commissioner dissenting, the Commission found that the claimant's accidental fall on November 9, 2005, arose out of her employment. In support of this conclusion, the Commission relied on the fact that the claimant was injured while performing a required task in the middle of a work day. In addition, the Commission stated that, though it was unnecessary to reach the issue of whether the claimant was exposed to an "increased risk," her claim was compensable under this alternative analysis where she had proven that she was regularly required to traverse the streets in order to make bank deposits on behalf of the District and, therefore, was exposed to the risk of the "dip" in the driveway with greater frequency than were members of the general public.

Based on the evidence presented and the stipulations of the parties, the Commission awarded the claimant temporary total disability (TTD) benefits for a period of 16 4/7 weeks from November 10, 2005, through March 5, 2006. The Commission also determined that the claimant had sustained a permanent partial disability (PPD) to the extent of 35% loss of use of her right and left hands and awarded her PPD benefits of $591.77 per week for a period of 143.5 weeks. Finally, the Commission awarded the claimant $4,358.15 for reasonable and necessary medical expenses.

The District filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The

circuit court reversed the Commission's decision, finding that the claimant was not exposed to a risk greater than that faced by the general public. This appeal followed.

On appeal, the claimant argues that the circuit court erred in setting aside the decision of the Commission, where the evidence established that the accidental injuries she sustained on November 9, 2005, arose out of her employment. We agree.

To obtain compensation under the Act, a claimant must show by a preponderance of the evidence that he or she has suffered a disabling injury arising out of and in the course of his or her employment. 820 ILCS 305/2 (West 2004). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). Whether an injury arises out of and in the course 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 v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795 (2000). A finding of fact is contrary to the manifest weight of the evidence only where an opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918 (2006). The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same

conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833, 769 N.E.2d 66 (2002).

Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 57, 541 N.E.2d 665 (1989). Here, it is undisputed that the claimant's injuries were sustained in the course of her employment. At the time that she fell, the claimant was walking to the bank to make deposits on behalf of the District, which was a task required by her position. Thus, the sole issue is whether the claimant's injuries arose out of her employment.

The "arising out of" component refers to the origin or cause of the claimant's injury and requires that the risk be connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. Courts have recognized three general types of risks to which an employee may be exposed: (1) risks that are distinctly associated with the employment; (2) risks that are personal to the employee; and (3) neutral risks that do not have any particular employment or personal characteristics. *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 116, 881 N.E.2d 523 (2007), citing *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162.

In this case, the claimant was injured when she stumbled and fell on a "dip" in a driveway that intersected a public sidewalk. There is no evidence that the claimant suffered from a physical condition that caused her to fall, nor is the risk of such an accident distinctly associated with her employment. Accordingly, the risk that the claimant would be injured as a result of a fall while traversing a public sidewalk and commercial driveway was neutral in nature.

Injuries resulting from a neutral risk generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163. Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public. Potenzo, 378 Ill. App. 3d at 117, citing *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 353, 732 N.E.2d 49 (2000) (Rakowski, J., specially concurring).

Under the "street risk" doctrine, where the evidence establishes that the claimant's job requires that she be on the street to perform the duties of her employment, the risks of the street become one of risks of the employment, and an injury sustained while performing that duty has a causal relation to her employment. *Potenzo*, 378 Ill. App. 3d at 118 (citing *C.A. Dunham*

Co. v. Industrial Comm'n, 16 Ill. 2d 102, 111, 156 N.E.2d 560 (1959)); see also *City of Chicago v. Industrial Comm'n*, 389 Ill. 592, 601, 60 N.E.2d 212 (1945); *Mueller Construction Co. v. Industrial Board of Illinois*, 283 Ill. 148, 158-59, 118 N.E. 1028 (1918). In such a circumstance, it is presumed that the claimant is exposed to risks of accidents in the street to a greater degree than if she had not been employed in such a capacity, and the claimant will be entitled to benefits under the Act. *City of Chicago*, 389 Ill. at 601.

The undisputed evidence establishes that the claimant was required to traverse the public streets and sidewalks to make bank deposits on behalf of the District. As such, the hazards and risks inherent in the use of the street became the risks of her employment. A six-inch "dip" in a commercial driveway is a street hazard, and, though the risk of tripping and falling on such a hazard is a risk faced by the public at large, it was a risk to which the claimant, by virtue to her employment, was exposed to a greater degree than the general public. See *C.A. Dunham Co.*, 16 Ill. 2d at 111.

Moreover, even if the claimant were required to present proof that she faced an increased risk, she has met that burden. The claimant testified at the arbitration hearing that she was required to use the public way in making the bank deposits two or three times each week. The Commission specifically found that this evidence established that the claimant was exposed to the risk of

the "dip" in the driveway with greater frequency than members of the general public.

Based on the record presented, the manifest weight of the evidence established that the injuries sustained by the claimant on November 9, 2005, arose out of and in the course of her employment with the District, and, as a consequence, she is entitled to benefits under the Act. We, therefore, reverse the judgment of the circuit court and reinstate the decision of the Commission which awarded the claimant benefits under the Act.

Judgment reversed; award reinstated.

JUSTICE HOLDRIDGE, specially concurring.

I concur. I write separately to note my concurrence only with the majority's holding that the claimant has met her burden of showing that she was exposed to a risk greater than the general public. As the majority observed, the claimant testified at the arbitration hearing that she was required to use the sidewalk where the "dip" was located in making the bank deposits two or three times every week. The Commission specifically found that this evidence established that the claimant was exposed to the risk of the "dip" in the driveway with greater frequency than members of the general public. As this finding by the Commission is not against the manifest weight of the evidence, the award of compensation should be affirmed on that basis alone.

As this case is simply one where the Commission found that the claimant was exposed to risk greater than the general public by

virtue of the number of times she was required by her employment to be exposed to the sidewalk defect, I see no need to go further with analysis of the so-called "street risk" doctrine. The doctrine, which is in essence the "traveling employee" doctrine (See *Potenzo v. Illinois Workers' Compensation Comm'n,* 378 Ill. App. 3d 113, 119 (2007), does nothing to clarify what a claimant must do to establish that his or her injuries arose out of their employment. The concept that merely because an employee's employment places him on the street there is a "presumption" that all the hazards of the street are now hazards of his employment is a particularly unappealing one. Is this presumption rebuttable? Does this presumption not impermissibly shift the burden to the employer to show that the claimant is *not* entitled to benefits? Should the "street risk" doctrine now also be expanded, as in the instant matter, to a new "sidewalk risk" doctrine? These are questions which do not need to be addressed, if we confine our analysis to whether the claimant can establish that her employment, either quantitatively or qualitatively, exposed her to a risk greater than that of the general public. *Potenzo,* 378 Ill. App. 3d at 117. Here, the Commission determined that the claimant had met her burden of proof, without any presumption. I would find that the Commission's decision was not against the manifest weight of the evidence. I would affirm the Commission on that basis alone.