Workers' Compensation
Commission Division
Filed: April 28, 2011

No. 4-10-0375WC

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

CATHY BALDWIN,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	VERMILION COUNTY
	)	
v.	)	No. 09 MR 143
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Securitas Security Services,	)	
	)	HONORABLE
	)	JOSEPH SKOWRONSKI JR.
Appellee).	)	JUDGE PRESIDING.

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

OPINION

The claimant, Cathy Baldwin, appeals from an order of the circuit court of Vermilion County which confirmed two decisions of the Illinois Workers' Compensation Commission (Commission) denying her benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.*(West 2004)) for injuries she sustained on October 8, 2006, and November 19, 2006, while in the employ of Securitas Security Services (Securitas). For the reasons that follow, we affirm the judgment of he circuit court.

The following is a summary of the relevant evidence adduced at the arbitration hearing.

The claimant was employed by Securitas as a security guard. On October 8, 2006, she was assigned to inside guard duty, which consisted of walking throughout a building and walking around the outside perimeter. According to her testimony, she was descending a metal staircase when she slipped and fell, landing on her left side. She testified that she did not know what caused her foot to slip. She saw no defect on the step or any liquid substance thereon. At the time that she slipped, the claimant was wearing shoes with rubber soles, she was not in a hurry, and her hands were free. The claimant stated that, just prior to her fall, she had walked through a freezer and moisture "might" have been on her shoes. However, she admitted that she did not know what actually caused her foot to slip. The claimant testified that, prior to October 8, 2006, she had never experienced any problems with her legs, she did not suffer from any medical condition that affected her balance or made her dizzy, she had no problems walking or going up or down stairs, and she had never used a cane.

Following her fall on October 8, 2006, she sought medical treatment at Provena Medical Center (Provena). The records of that visit indicate that the claimant was diagnosed with a left buttock/left posterior hip contusion with secondary spasms and pain in the left buttock, left thigh and left hamstring muscle. The claimant was given a TENS unit, prescribed medication, placed on an off-work status, and advised to return on October 12, 2006, for follow-up treatment.

When the claimant returned to Provena on October 12, 2006, she continued to complain of pain. Her diagnosis remained unchanged. She was given a cane to assist her with walking and advised to return on October 19, 2006, or sooner if necessary.

Provena's records reflect that when the claimant returned on October 17, 2006, she reported increased pain when she walked long distances and when she sat for prolonged periods of time. She also reported that the TENS unit was helping and that, generally, her pain was improving. The attending physician continued the claimant's use of a cane and a TENS unit, continued to prescribe medication, and recommended a referral to a physical therapist for evaluation and treatment.

When the claimant returned to Provena on November 3, 2006, she reported difficulty with stair climbing. The attending physician's notes of that visit state that on examination the claimant walked normally and that her stair-climbing exercises were "okay," but some pain and difficulty were noted with repetition. The claimant's medications were extended, and she was to continue the use of the TENS unit, complete the physical therapy regimen, and use the cane on an as-needed basis.

On November 16, 2006, the claimant returned to Provena and reported that the physical therapy sessions had helped, that she was 90% improved, and that she was pain free. The notes of that visit state that the claimant had worked outside on the previous night in the cold and rain and that she had tolerated the work

well. The attending physician's report states that, on examination, the claimant demonstrated normal function. She was advised to continue home exercises, released to return to regular work immediately, and discharged from care.

The claimant returned to light-duty work at 11 p.m. on November 16, 2006. According to the claimant, she informed her supervisor, Greg Daugherty, at the beginning of her shift that her leg was still hurting and that she did not believe she could do inside guard duties because of all of the walking involved. The claimant testified that Daugherty told her to take her time and do part of her rounds and sit down before doing the rest. When Daugherty testified, he stated that, after the claimant returned to full-duty work, she told him that she felt "great" and never complained of leg cramping or soreness.

On November 18, 2006, the claimant was placed on inside duty requiring her to walk throughout the building and walk around the outside perimeter.

On November 19, 2006, the claimant was again assigned to inside duty. She testified that while walking up a flight of stairs her leg began to cramp and throb. The claimant stated that, when she attempted to walk back down the stairs, her leg began cramping "real bad" and gave out, causing her to fall.

After her fall, the claimant was taken to Provena, where she was diagnosed as having suffered a pelvic fracture. She was admitted to the hospital but, on November 22, 2006, she was

transferred to the Danville Care Center for follow-up care and treatment.

At the request of Securitas, Dr. D. Dirk Nelson reviewed the claimant's medical records from both falls. His diagnosis of the claimant's injuries agreed with those of the attending physicians at Provena. In his report dated January 9, 2007, Dr. Nelson opined that the claimant's fall on October 8, 2006, did not cause or contribute to any condition that might have influenced her injury on November 19, 2006. Additionally, he did not believe that any part of the claimant's injuries on October 8, 2006, would have caused her leg to give way and cause additional injury on November 19, 2006.

On January 24, 2007, the claimant was examined by Dr. David J. Fletcher at the request of her own attorneys. In his report of that examination, Dr. Fletcher opined that the claimant's leg injury and subsequent condition from her first fall contributed to bringing about her second fall. According to Dr. Fletcher, the claimant "was not 100% with the left leg and buttock contusion suffered from the first fall when she returned to full duties after 11/16/06."

The two applications for adjustment of claim filed by the claimant for the injuries she sustained as a result of the falls on October 8, 2006, and November 19, 2006, were consolidated for a hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b)(West 2006)). Following that hearing, the arbitrator issued a separate decision for each case, concluding in both cases

that the claimant failed to prove that she sustained injuries arising out of and in the course of her employment with Securitas. As a consequence, the arbitrator denied the claimant benefits under either claim.

The claimant filed a petition for review of the arbitrator's decisions before the Commission. In separate unanimous decisions, the Commission affirmed and adopted the arbitrator's decisions, denying the claimant benefits under the Act for the injuries she sustained as a result of either incident.

Thereafter, the claimant filed a single petition seeking judicial review of both of the Commission's decisions in the Circuit Court of Vermilion County. Securitas argued, *inter alia*, that the claimant's action for judicial review in the circuit court was fatally defective for failure to comply with the requirements of section 19(f)(1) of the Act (820 ILCS 305/19(f)(1)(West 2006)). In a single order, the circuit court denied Securitas' motion to dismiss the action on jurisdictional grounds and confirmed both of the Commission's decisions. This appeal followed.

Although Securitas argues on appeal that the circuit court erred in failing to dismiss the claimant's petition for judicial review by reason of its failure to comply with section 19(f)(1) of the Act, we note that Securitas never filed a notice of appeal. Notwithstanding that fact, we will, nevertheless, address the issue as we have an independent obligation to consider matters that go to the jurisdiction of the circuit court. *Reichert v. Court of*

Claims, 203 Ill. 2d 257, 261, 786 N.E.2d 174 (2003); *Consolidated Freightways v. Workers' Compensation Comm'n*, 373 Ill. App. 3d 1077, 1079, 870 N.E.2d 839 (2007).

The record in this case establishes that the claimant filed her action for judicial review in the circuit court of Vermilion County on July 16, 2009. She filed a request for the issuance of summons requesting that the Commission certify the transcript of proceedings in cases No. 06 WC 54938 (the claim relating to her fall on October 8, 2006) and No. 06 WC 54919 (the claim relating to her fall on November 19, 2006), asserting that the Commission's decision was received on June 26, 2009. In addition, the claimant requested that summons also be directed to Securitas and its attorney. Along with her request for the issuance of summons, the claimant filed the affidavit of her attorney stating that he forwarded a check in the sum of $35 to the Commission on July 7, 2009, via Federal Express overnight delivery. The affidavit also states that the Commission received the check on July 8, 2009, as evidenced by a Federal Express tracking update attached to the affidavit, reflecting that the delivery had been received at the Commission's mailroom at 8:32 a.m. on July 8, 2009, and signed for by T. Zelke.

The request for summons and the affidavit were filed within 20 days of receipt of the Commission's decisions as required by section 19(f)(1) of the Act, and the $35 payment evidenced by the affidavit was the sum that the Commission fixed in each of its

decisions as the probable cost of the record. The only argument made by Securitas to support its assertion that the claimant's action in the circuit court should have been dismissed is that section 19(f)(1) does not provide for the consolidation of multiple appeals in a single action.

In the case of *Chicago Transit Authority v. Industrial Comm'n*, 238 Ill. App. 3d 202, 606 N.E.2d 236 (1992), this court was faced with a fact situation almost identical to the instant case. Two separate applications for adjustment of claim were consolidated for a single arbitration hearing. The arbitrator issued two separate decisions following the hearing. On review, the Commission issued two separate decisions on the same day. Judicial review of both decisions was sought with the filing of a single request for summons, referencing both Commission case numbers. A motion to dismiss was filed, contending that the failure to file two petitions for review of the Commission decisions deprived the circuit court of jurisdiction. *Chicago Transit Authority*, 238 Ill. App. 3d at 203. We concluded that substantial compliance with section 19(f)(1) of the Act had been demonstrated. None of the requirements of the statute had been completely omitted and, at worst, the requirements had been imperfectly complied with by the filing of a single request for summons. Consequently, in the absence of prejudice to the respondent, the circuit court had subject-matter jurisdiction of the action. *Chicago Transit Authority*, 238 Ill. App. 3d at 207.

In this case, as in *Chicago Transit Authority*, none of the requirements of section 19(f)(1) was completely omitted; the only imperfection was the filing of a single request for summons instead of two separate requests. Additionally, Securitas has made no argument of prejudice. For these reasons, we hold that the claimant substantially complied with the requirements of section 19(f)(1), the circuit court had jurisdiction to resolve the action, and the circuit court properly denied Securitas' motion to dismiss.

Next, we address the claimant's arguments that the Commission's findings that she failed to prove that she sustained injuries arising out of and in the course of her employment on either October 8, 2006, or November 19, 2006, are against the manifest weight of the evidence.

A claimant bears the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of the employment. 820 ILCS 305/2 (West 2004). Both elements must be present in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989). In this case, only the "arising out of" component is at issue as the plaintiff's falls clearly occurred on the employer's premises and while she was working.

Arising out of the employment pertains to the origin or cause of a claimant's injury. *William G. Ceas & Co. v. Industrial Comm'n*, 261 Ill. App. 3d 630, 636, 633 N.E.2d 994 (1994). In order to determine whether a claimant's injury arose out of her

employment, we first categorize the risk to which she was exposed. Risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799 (2006).

The record reflects that, at the time of the claimant's fall on October 8, 2006, she was in good health, she had never experienced any problems with her legs, she did not suffer from any medical condition that affected her balance or made her dizzy, and she had no problems walking or using stairs. Nevertheless, she slipped and fell as she was descending a metal staircase. The claimant testified that she did not know what caused her to slip. She saw no defect in the stairs, nor did she observe any liquid substance thereon.

The claimant's own testimony eliminates any notion that her fall on October 8, 2006, was idiopathic in nature. As to whether her fall on that date stemmed from a risk associated with her employment, we note that the claimant theorized that moisture "might" have built up on her shoes from walking through a freezer, but her testimony in this regard was pure conjecture. The claimant cannot show more than a mere possibility that moisture which may have built up on her shoes from walking through a freezer caused her to slip and fall on he stairs. See *First Cash Financial*

Services, 367 Ill. App. 3d at 106-07. Simply put, the claimant does not know what caused her to fall on October 8, 2006.

For an injury caused by an unexplained fall to arise out of the employment, a claimant must present evidence which supports a reasonable inference that the fall stemmed from a risk related to the employment. *Builders Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 1010, 791 N.E.2d 1308 (2003). However, an injury resulting from a neutral risk to which the general public is equally exposed does not arise out of the employment. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 59 (1989). By itself, the act of walking up a staircase does not expose an employee to a risk greater than that faced by the general public. *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d 238, 244, 505 N.E.2d 1062 (1987); see also *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 353, 732 N.E.2d 49 (2000) (Rakowski, J., specially concurring).

The claimant in this case did not present any direct evidence explaining the cause of her fall. She testified that she did not know why she fell and that no one witnessed her fall. As noted earlier, the notion that moisture "might" have built up on her shoes from walking through a freezer is pure conjecture.

Because the claimant did not present any evidence establishing the cause of her fall on October 8, 2006, or that she was exposed to a risk greater than that faced by the general public, she failed to prove that her injury on that date arose out of her employment.

For these reasons, the Commission's decision denying her any benefits under the Act for injuries she may have sustained on October 8, 2006, is not against the manifest weight of the evidence. *First Cash Financial Services*, 367 Ill. App. 3d at 107.

Finally, we address the Commission's decision denying the claimant benefits for the injuries she sustained when she fell down the stairs while working on November 19, 2006. The claimant testified that when she attempted to walk down the stairs at work on November 19, 2006, her leg began cramping "real bad" and it gave out, causing her to fall.

Falls resulting from an internal, personal origin are idiopathic in nature. An injury resulting from an idiopathic fall arises out the employment only where the employment conditions significantly contributed to the injury by increasing the risk of falling or the effects of the fall. *Stapleton v. Industrial Comm'n*, 282 Ill. App. 3d 12, 16, 668 N.E.2d 15 (1996). The claimant offered no evidence that, on November 19, 2006, any condition of the premises in which she was working or of the staircase on which she fell contributed to her fall or placed her in a position which increased the dangerous effects of the fall. *Elliot*, 153 Ill. App. 3d at 244. Her own testimony clearly demonstrates that the claimant's fall on November 19, 2006, resulted solely from an internal, personal origin. Her fall was purely idiopathic and noncompensable under the Act. *First Cash Financial Services*, 367 Ill. App. 3d at 105; *Stapleton*, 282 Ill.

App. 3d at 16; *Elliot*, 153 Ill. App. 3d at 242.

The foregoing analysis leads us to conclude that the claimant failed to prove that the injuries she sustained as a result of her fall on November 19, 2006, arose out of her employment. Therefore, the Commission's decision denying her any benefits under the Act for injuries she may have sustained on that date is not against the manifest weight of the evidence.

Based upon the foregoing analysis, we affirm the judgment of the circuit court which confirmed the decisions of the Commission, denying the claimant benefits under the Act for injuries she sustained on October 8, 2006, and November 19, 2006.

Affirmed.

09 IWCC 618

*2009 Ill. Wrk. Comp. LEXIS 591, **

CATHY **BALDWIN,** PETITIONER, v. **SECURITAS** SECURITY SERVICE, RESPONDENT.

NO: 06WC 54938

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF VERMILION

2009 Ill. Wrk. Comp. LEXIS 591

June 18, 2009

CORE TERMS: arbitrator, moisture, freezer, stairs, picture, shoe, disputed issues, failed to prove, unexplained, descending, slipped, bottom, gotten, accrue, wear

JUDGES: Nancy Lindsay; Molly C. Mason; Yolaine Dauphin

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident and being advised of the facts and law; affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed May 16, 2007 is hereby affirmed and adopted.

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

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

DATED: JUN 18 2009

ATTACHMENT:

ILLINOIS INDUSTRIAL COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice* **[*2]** *of Hearing* was mailed to each party.

The matter was heard by the Honorable Ruth White, arbitrator of the Industrial Commission, in the City of Danville, on March 19, 2007. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues circled 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?

FINDINGS

. On October 8, 2006, the respondent *was* operating wider and subject to the provisions of the Act.

. On this date, an employee-employer relationship *did* exist between the petitioner and respondent.

. Petitioner failed to prove that on this date she sustained accidental injuries that arose out of and in the course of employment.

ORDER

. 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 **[*3]** award, interest of 4.73% 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.

Signature of arbitrator

May 11, 2007

Date

MAY 16 2007

In support of the arbitrator's decision relating to "C. Did an accident occur that arose out of and in the course of the Petitioner's employment by the respondent?" the arbitrator finds the following facts:

Petitioner fell twice on metal stairs while doing her rounds as a security guard. The first time she fell was October 8, 2006. The second time was November 19, 2007.

On October 8, 2006, Petitioner testified that she was descending the stairs when she slipped on the second step from the bottom. Her testimony describes a fall that is unexplained. In order for an unexplained fall to arise out of employment, there must be facts upon which a reasonable inference of risk can be based. Petitioner testified that she had possibly gotten moisture on the bottom of her shoe in a freezer before descending the stairs; however, there was no evidence of any moisture in the freezer or on her shoe. In addition, Gregory **[*4]** Wayne Daugherty testified for Respondent that he had never seen moisture on the floor of the freezer or gotten moisture on his shoes in the freezer. In the absence of facts, the arbitrator cannot speculate on possible risks.

Petitioner's Exhibit 10 is a set of pictures of the stairs on which Petitioner fell for both of these accidents. The picture labeled B is the step on which Petitioner slipped on October 8, 2006. The picture does show some wear on the paint, but the wear is not extensive, does not cover continuous areas of the edge of the step and does not appear to constitute a hazard.

The arbitrator is unable to draw an inference from the facts in this case that Petitioner's accident of October 8, 2006 was the result of a risk of her employment.

Petitioner failed to prove that the accident of October 8, 2006 arose out of her employment with Respondent.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

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

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

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09 IWCC 619

*2009 Ill. Wrk. Comp. LEXIS 592, **

CATHY **BALDWIN,** PETITIONER, v. **SECURITAS** SECURITY SERVICES, RESPONDENT.

NO: 06WC 54919

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF VERMILION

2009 Ill. Wrk. Comp. LEXIS 592

June 18, 2009

CORE TERMS: arbitrator, idiopathic, compensable, leg, disputed issues, failed to prove, accrue

JUDGES: Nancy Lindsay; Molly C. Mason; Yolaine Dauphin

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issue of accident and being advised of the facts and law, clarifies, affirms, and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

In denying Petitioner's claim on the basis of accident, the Arbitrator noted in her Decision that injuries sustained in an idiopathic fall are not compensable. The Commission notes that idiopathic falls can be compensable in certain circumstances; however, the Commission finds those circumstances aren't present in this case, and agrees with the Arbitrator's Decision herein.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 16, 2007 is hereby clarified, affirmed, and adopted.

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, **[*2]** check or money order therefor and deposited with the Office of the Secretary of the Commission.

DATED: JUN 18 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

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 Ruth White, arbitrator of the Industrial Commission, in the City of Danville, on March 19, 2007. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues circled 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?

FINDINGS

. On November 19, 2006, the respondent *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.

. Petitioner failed to prove that on this date she sustained accidental sustain injuries that arose out of and in the course of employment.

ORDER

. Claim for compensation is denied.

RULES REGARDING APPEALS Unless **[*3]** 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 4.73% 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.

Signature of Arbitrator

May 11, 2007

Date

MAY 16 2007

In support of the arbitrator's decision relating to "C. Did an accident occur that arose out of and in the course of the Petitioner's employment by the respondent?" the arbitrator finds the following facts:

Petitioner testified that on November 19, 2006 she was doing her rounds as a security guard descending a stairway when she fell. She testified that she fell because her left leg failed. Her left leg had been injured in an earlier fall on October 8, 2006. Her belief that the injured leg was the cause of the fall is supported by the evidence of Dr. Fletcher. This fall was idiopathic because the cause of the fall was a condition **[*4]** within Petitioner that did not arise out of her employment. Injuries sustained in an idiopathic fall are not compensable.

Petitioner failed to prove that the accident of November 19, 2006 arose out of her employment.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

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

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

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Workers' Compensation
Commission Division
Filed: June 30, 2011

08 WC 030356
09 IWCC 989

NO. 1-10-1667WC

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

Illinois Workers' Compensation Commission Division

SHAREEDA COOLEY,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Cook County
ILLINOIS WORKERS' COMPENSATION	)	No. 09L51434
COMMISSION and MB FINANCIAL BANK,	)	
Defendant-Appellee.	)	Honorable
	)	James C. Murray,
	)	Judge Presiding.

PRESIDING JUSTICE McCULLOUGH delivered the judgment of the court. Justices Hoffman and Hudson concurred in the judgment. Justice Stewart dissented, joined by Justice Holdridge.

RULE 23 ORDER

Held: The Workers' Compensation Commission's finding that claimant failed to prove she sustained accidental injuries arising out of and in the course of her employment with employer was not against the manifest weight of the evidence.

On July 10, 2008, claimant, Shareeda Cooley, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2006)), seeking benefits from employer, MB Financial Bank, for injuries suffered to her right knee on June 23, 2008.

After a hearing, an arbitrator found claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer and awarded claimant benefits. On review, the Workers' Compensation Commission (Commission) reversed the arbitrator's decision finding claimant failed to prove she sustained accidental injuries arising out of and in the course of her employment with employer. The circuit court confirmed the Commission's decision.

Claimant appeals, arguing the Commission's finding that claimant failed to prove she sustained accidental injuries arising out of and in the course of her employment with employer on June 23, 2008, is against the manifest weight of the evidence. We affirm.

The following factual recitation is taken from the evidence presented at the arbitration hearing on December 1, 2008. The 25-year-old claimant testified that she worked as a customer-service representative for employer for approximately six years. On June 23, 2008, claimant fell at work as she was descending three carpeted steps. She stepped with her right foot and "[i]t got stuck" and she fell. Claimant did not know what caused her foot to become "stuck." She saw no defect on the step. At the time that she fell, claimant was wearing flat shoes with rubber soles and her hands were free. Claimant testified that there was a "slit vent" on one step.

Claimant stated that she injured her right knee in approximately 2000 or 2001 and underwent right knee surgery. She did not experience any problems with her right knee before her fall on June 23, 2008. She did not suffer from any medical condition that affected her balance.

On cross-examination, claimant testified that the vent was "underneath" the stair and she "believed" that she caught her right foot in the vent. Claimant next testified that there

were two vents and she caught her pant leg in a vent.

Following her fall on June 23, 2008, claimant sought medical treatment with Dr. William Cruikshank. Dr. Cruikshank ordered a magnetic resonance imaging (MRI) of claimant's right knee, which was performed on June 25, 2008. The MRI showed a moderate joint effusion, poor visualization of the proximal ACL, a tear of the posterior horn and boy of the medial meniscus, large cartilaginous defect, and central weight bearing aspect of the medial femoral condyle with bone marrow edeman. Claimant returned to Dr. Cruikshank on June 26, 2008. Dr. Cruikshank diagnosed claimant with a right knee injury and removed claimant from work.

Upon referral from Dr. Cruikshank, claimant sought treatment with Dr. Michael Maday on July 2, 2008. The records of that visit indicate that claimant was diagnosed with an ACL tear with medial meniscal tear with chondral injury of medial femoral condyle. Claimant "[did] not remember the exact mechanism of injury, but fell to the ground" while at work. Dr. Maday recommended a short course of physical therapy to decrease swelling, regain motion, and strengthen the knee before proceeding to decrease the postoperative complications of arthrofibrosis.

Claimant underwent surgery on September 4, 2008. Claimant returned to work on September 22, 2008, and was terminated by employer on September 23, 2008.

On November 3, 2008, claimant reported to Dr. Brian Coe that she tripped on three concrete steps and twisted her knee as she fell.

Following the hearing, the arbitrator found claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer and awarded

claimant benefits. The arbitrator noted, however, that claimant's "testimonial attempt to attribute her fall to her foot getting stuck in the vent only serve[d] to undermine her credibility and her claim."

Employer filed a petition for review of the arbitrator's decisions before the Commission. The Commission reversed the arbitrator's decision, finding claimant was not credible and failed to prove she sustained accidental injuries arising out of her employment on June 23, 2008.

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

Claimant argues the Commission's finding that she failed to prove she sustained injuries arising out of and in the course of her employment on June 23, 2008, is against the manifest weight of the evidence.

A claimant bears the burden of proving by a preponderance of the evidence that her injury arose out of and in the course of the employment. 820 ILCS 305/2 (West 2006). Both elements must be present to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 605 (1989). In this case, only the "arising out of" component is at issue as the claimant's fall clearly occurred on the employer's premises and while she was working.

Arising out of the employment pertains to the origin or cause of a claimant's injury. *William G. Ceas & Co. v. Industrial Comm'n*, 261 Ill. App. 3d 630, 636, 633 N.E.2d 994, 998 (1994). To determine whether a claimant's injury arose out of her employment, we first catego-

rize the risk to which she was exposed. Risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics. *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799, 803 (2006).

The record reflects that, at the time of claimant's fall on June 23, 2008, she was not experiencing any problems with her right knee, she did not suffer from any medical condition that affected her balance or made her dizzy, and she had no problems walking or using stairs. Nevertheless, her foot "stuck" and she fell as she was descending three steps. The claimant testified that she did not know what caused her foot to become "stuck." She saw no defect in the steps.

Claimant's own testimony eliminates any notion that her fall on June 23, 2008, was idiopathic in nature. As to whether her fall on that date stemmed from a risk associated with her employment, we note that claimant theorized that she caught her right foot in a vent or her pant leg in a vent, but her testimony in this regard was pure conjecture. Simply put, the claimant does not know what caused her to fall on June 23, 2008.

For an injury caused by an unexplained fall to arise out of the employment, a claimant must present evidence to support a reasonable inference that the fall stemmed from a risk related to the employment. *Builders Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 1010, 791 N.E.2d 1308, 1311 (2003). However, an injury resulting from a neutral risk to which the general public is equally exposed does not arise out of the employment. *Caterpillar Tractor*

Co. v. Industrial Comm'n, 129 Ill. 2d 52, 59, 541 N.E.2d 665, 667-68 (1989). By itself, the act of walking down three steps does not expose an employee to a risk greater than that faced by the general public. *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d 238, 244, 505 N.E.2d 1062, 1067 (1987); see also *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 353, 732 N.E.2d 49, 54 (2000) (Rakowski, J., specially concurring).

Claimant in this case did not present any direct evidence explaining the cause of her fall. She testified that she did not know why she fell and that no one witnessed her fall. As noted earlier, the notion that she caught her right foot in a vent or her pant leg in a vent is pure conjecture.

Because claimant did not present any evidence establishing the cause of her fall on June 23, 2008, or that she was exposed to a risk greater than that faced by the general public, she failed to prove that her injury on that date arose out of her employment. For these reasons, the Commission's decision denying her any benefits under the Act for injuries she may have sustained on June 23, 2008, is not against the manifest weight of the evidence. *First Cash Financial Services*, 367 Ill. App. 3d at 107, 853 N.E.2d at 805.

We affirm the judgment of the circuit court confirming the Commission's decision.

Affirmed.

JUSTICE STEWART, dissenting.

In order to adequately explain my disagreement with the majority's decision it is necessary to provide additional facts. The claimant worked as a teller in a drive-up window at a

banking facility owned by the employer. On the date of her injury, she had been employed by the bank for approximately six years. The drive-up teller area was located on a platform which was three steps higher than the main bank teller area. Neither the drive-up teller area nor the main bank teller area was accessible to the general public. The claimant's job duties required that she frequently traverse the three steps between the drive-up teller area and the main bank teller area. The claimant testified, without contradiction, that her duties required her to ascend and descend the three steps approximately 15 to 25 times each day. On June 23, 2008, while descending the steps from the drive-up teller area to the main bank teller area, she fell, injuring her knee. Although the claimant attempted to explain how she fell, it is apparent that she is unable to explain the cause of her fall other than that her foot got "stuck."

Although the arbitrator noted that the claimant's attempts to point to a defect in the stairs were not credible, he found her claim compensable. In doing so, the arbitrator explained as follows: "The [claimant's] use of the stairs is necessary in order for her to perform her work duties. She performed supervisory duties and worked on the teller line. The [claimant] used the stairs frequently to perform her work duties. Therefore, the [claimant] was at an increased risk of falling and injury."

In a two-to-one decision, the Commission reversed the arbitrator, finding that the claimant had failed to prove that the accident arose out of her employment. The majority of the Commission found that the claimant's explanations of the cause of her fall were not credible, and summarized its findings as follows:

"Upon looking at the totality of the evidence, it appears that [the claimant]

> didn't present any direct evidence explaining the cause of her fall and given [the claimant's] long delayed explanation after several inquiries into the specifics of the claim that she believed the fall was caused by her pant leg getting stuck in a vent, the Commission is unwilling to draw a reasonable inference that the fall stemmed from a risk associated with her employment. *** She did testify that she traversed the steps many times in a given day and that the steps were not open to the general public. However, the Commission finds that while [the claimant] testified she traversed the steps multiple times a day she didn't provide sufficient evidence explaining the cause of her fall."

The dissenting commissioner noted that the claimant suffered an "unexplained" fall and that the claimant was required to traverse the stairs 15 to 25 times each day in performing her work duties. The dissenter would have found the claim compensable because, "[t]he extent of [the claimant's] required use of the stairs in the performance of her job duties placed her at an increased risk of falling and injury."

I agree with the arbitrator and the dissenting commissioner. The frequency with which the claimant was required to use the stairs rendered an otherwise neutral risk into a risk of her employment. The majority has failed to address this analysis.

The sole issue before this court is whether the claimant's injury arose out of her employment. "An injury 'arising out of' one's employment may be defined as one which has its origin in some risk so connected with, or incidental to, the employment as to create a causal

connection between the employment and the injury." *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 45, 509 N.E.2d 1005, 1008 (1987). "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." *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 116, 881 N.E.2d 523, 527 (2008). "The act of walking down the stairs itself does not establish a risk greater than those faced outside of work" and is therefore a neutral risk. *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d 238, 244, 505 N.E.2d 1062, 1067 (1987). "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." *Metropolitan Water District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014, 944 N.E.2d 800, 804 (2011). "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." *Id.* Thus, an employee who is unable to prove a qualitative risk, such as a defect in the stairs, may still prove that her injury arose out of her employment if she proves a quantitative risk, such as a work requirement that she use the stairs frequently. See *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1056, 820 N.E.2d 531 (2004) (claim compensable when claimant was required to frequently traverse a single step as part of her job duties because she was exposed to a common risk more frequently than the general public.)

In this case, it seems apparent that a majority of the Commission applied a faulty

analysis by requiring that the claimant prove both that she was required to use the stairs frequently and that there was some defect or other cause of her fall. The claimant has maintained throughout this case that since her job duties required her to traverse the steps frequently, she was subjected to a greater risk than the general public. In this court, the majority fails to include the frequency in which the claimant was required to traverse the steps in its decision or to analyze whether as a result of such frequency she was exposed to a greater risk than the general public. The claimant's unrebutted testimony reveals that each workday she was required to ascend and descend the three steps 15 to 25 times. Thus, in an eight hour day, the claimant was required to ascend and descend the stairs every 20 to 30 minutes. In my view, the claimant clearly proved that she was exposed to a neutral risk to a greater degree than the general public, and that her injury arose out of her employment.

For the foregoing reasons, I respectfully dissent, because I believe the decision of the Commission is against the manifest weight of the evidence. I would reverse the Commission and reinstate the decision of the arbitrator.

*2009 Ill. Wrk. Comp. LEXIS 1153, **

SHAREEDA COOLEY, PETITIONER, v. MB **FINANCIAL** BANK, RESPONDENT,

NO: 08WC 30356

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF COOK

2009 Ill. Wrk. Comp. LEXIS 1153

October 1, 2009

CORE TERMS: stair, vent, teller, right knee, stuck, medial, surgery, foot, pant, knee, accidental injury, failed to prove, twisted, femoral, condyle, tripped, drawers, caught, tear, leg, traversed, credible, cross examination, physical therapy, right foot, cartilaginous, meniscectomy, arthroscopy, supervisor, underwent

JUDGES: Mario Basurto; James F. DeMunno

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Respondent appeals the decision of Arbitrator Williams finding that Petitioner sustained an accidental injury arising out of and in the course of her employment on June 23, 2008. As a result Petitioner was temporarily totally disabled from June 23, 2008 through December 1, 2008 for 23-1/7 weeks under Section 19(b) of the Illinois Workers' Compensation Act. The Arbitrator further found Petitioner was not entitled to any additional compensation/attorneys' fees. The Issues on Review are whether Petitioner sustained an accident that arose out her employment on June 23, 2008, whether a causal relationship exists between the alleged June 23, 2008 accident and Petitioner's present condition of ill-being, and if so, the necessity of the medical services. The Commission, after reviewing the entire record and file, finds that Petitioner failed to prove she sustained an accidental injury arising out of and in the course of her employment on June 23, 2008.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission finds:

1. Petitioner, a 24 year old customer service representative, testified her duties consisted of supervisory duties including working in the **[*2]** teller line and in the

banker's office. Her direct supervisor was Devonna Walker. The drive up/teller windows are on a platform three steps up. The other teller area is located in the lobby three steps down. The teller area is not accessible to the public.

2. Petitioner testified that June 23, 2008 was the end of the month and we were in the process of performing some audits of the tellers' drawers. The keys for the tellers' drawers were located in a cabinet and the cabinet was located in the personal banker's office which was three steps down. On her way down to get the keys for the tellers' drawers she fell down the stairs. The steps were carpeted with greenish-blue carpet and they didn't have any treads. The steps were located in a lighted area. There was no hand rail attached to the steps. There is a slit vent on the first or second stair. The Petitioner said she believes she had taken one step with her right foot when she fell. She didn't have anything in her hands at that time. As she stepped out with her right foot it got stuck. She didn't see what it got stuck on at that time. After she fell she saw the vent. She initially said there was one vent and then she subsequently **[*3]** testified that there were two vents. She was wearing flat rubber soled shoes, slacks and a shirt. She would estimate that she went up/down the stairs 15-25 times a day.

3. Petitioner was asked on cross examination if she knew how her foot got stuck and she stated that she believed it was the vent located on the riser underneath the first step. Petitioner then said she felt that her pants leg got caught in the vent and that is how she fell. She answered that she wasn't sure but that is what she thinks happened.

4. Devonna Walker, Petitioner's supervisor, testified she heard Petitioner yell and she turned and looked and saw Petitioner on the floor at the bottom of the three stairs. She did not witness the accident. She didn't see anything in the area that would have caused Petitioner to fall. She didn't see anything out of the ordinary. There is nothing on the stair to get one's foot stuck on and she has never gotten her foot stuck on the stairs. The vents are on the front of the stairs and they were not damaged or in disrepair.

5. Petitioner initially treated with Dr. Cruikshank, her family doctor. He ordered a right knee MRI that took place on June 25, 2008. The right knee MRI **[*4]** showed moderate joint effusion, poor visualization of the proximal ACL, which the radiologist commented was suggestive of high grade injury or possibly a complete tear, a tear within the posterior horn and body of the medial meniscus, large cartilaginous defect at the central weigh bearing aspect of the medial femoral condyle with associated with bone marrow edema.

6. Petitioner followed up her right knee MRI with a visit to Dr. Cruikshank on June 26, 2008. Dr. Cruikshank noted that Petitioner reported that she fell at work. She tripped on something, heard a pop and felt pain in her right knee. Dr. Cruikshank diagnosed Petitioner as having a right knee injury and he treated her with medication an immobilizer and crutches and took her off of work.

7. On July 2, 2008 Petitioner was seen at Midland Orthopedics by Dr. Maday. Petitioner gave a history of falling on the job while on the teller line. Dr. Maday noted that apparently Petitioner fell and twisted her knee at work on June 23, 2008. Dr. Maday noted that Petitioner doesn't remember the exact mechanism of injury but knows she fell to the ground. Dr. Maday recommended a short course of physical therapy followed by surgery.

8. The **[*5]** July 11, 2008 physical therapy record indicates Petitioner has a history of a right torn ACL, meniscus and cartilage secondary to a reported fall at work on June 23, 2008 while working as a teller manager at a bank.

9. On August 13, 2008 Petitioner completed a Family and Medical Leave Act form in which she indicated she fell and twisted her knee at work.

10. On September 4, 2008 Petitioner underwent surgery consisting of a right knee arthroscopy, partial medial meniscectomy, arthroscopic repair of the ACL, reconstruction of patellar tendon allograft and microfracture medial femoral condyle with insertion of pain pump. The post-operative diagnosis was right knee ACL, medial meniscal tear, cartilaginous defect and medial femoral condyle procedure. The surgery report indicated Petitioner fell at work and injured her knee.

11. On November 3, 2008 Petitioner was seen by Dr. Coe for an independent medical evaluation upon Petitioner's attorney's request. At the exam Petitioner told Dr. Coe that she had tripped down three concrete stairs and twisted her knee when she fell. Dr. Coe noted that Petitioner reported that she had previously injured her right knee in 2000 which ultimately led **[*6]** to arthroscopy and medial meniscectomy surgery in 2002. Petitioner reported after the surgery she made a full recovery and incurred no residual deficits over the next six years. After examining the Petitioner and reviewing her records Dr. Coe noted that based on the absence of pre-existing symptoms and the mechanism of the injury, he opined that Petitioner's current treatment and surgery were related to the June 23, 2008 injury.

The Commission finds that Petitioner must prove each and every element of her claim. An employee's injury is compensable under the Act if it arises out of and in the course of the employment. In this instance the Commission finds that Petitioner was in the course of her employment at the time of the alleged June 23, 2008 work accident but the Petitioner was not credible and the Petitioner failed to prove her accident arose out of her employment on June 23, 2008. More specifically, the Commission finds Petitioner's testimony does not match up with her contemporary medical histories. Petitioner reported to the doctors that she 1. "tripped on something"; 2. didn't know the mechanism of the injury and 3. fell on "concrete" steps. Yet, during the arbitration hearing **[*7]** Petitioner didn't testify to tripping on anything. She did testify to the exact cause of the fall and she identified the steps as being carpeted. Furthermore, the Commission found it interesting that Petitioner didn't testify initially that there were two vents on the stairs or that her pants got caught in the vent. Rather, she didn't testify to there being two vents or that her pants got caught in the vent until after she underwent extensive questioning on cross examination. At most Petitioner stated that her foot got stuck on some unidentified item and she lead off the cross-examination testimony by saying her foot, not her pant leg, got stuck in the vent, which is located on the riser on the stairs and which appears to be unlikely to have occurred unless she was marching down the stairs with her toe pointed in. Upon looking at the totality of the evidence, it appears that Petitioner didn't present any direct evidence explaining the cause of her fall and given Petitioner's long delayed explanation after several inquiries into the specifics of the claim that she believed the fall was caused by her pant leg getting stuck in a vent, the Commission is unwilling to draw a reasonable **[*8]** inference that the fall stemmed from a risk associated with her employment. See First Cash **Financial** Services v. Industrial Commission, 853 N.E.2d 799 (2006). The Commission further notes that Petitioner testified that she was not carrying anything or hurrying at the time. She did testify that she traversed the steps many times in a given day and that the steps were not open to the general public. However, the Commission finds that while Petitioner testified she traversed the steps multiple times a day she didn't provide sufficient evidence explaining the cause of her fall. Overall, the Commission finds that Petitioner's testimony/histories were inconsistent with one another and the Commission finds Petitioner was not credible. Petitioner has the burden of having to provide every element of her claim and her claim should not be proven up through her testimonial evidence especially

when it doesn't coincide with the remainder of the evidence. Sorenson v. Industrial Commission, 281 Ill. App.3d 373 (1996). Thus, the Commission reverses the Arbitrator's finding of accident and finds that Petitioner failed to sustain her burden **[*9]** of proving that she experienced an accident arising out of her employment on June 23, 2008.

IT IS THEREFORE ORDERED BY THE COMMISSION that since Petitioner failed to prove she sustained an accidental injury arising out of and in the course of her employment on June 23, 2008, her claim for compensation is hereby denied.

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

DISSENTBY: DAVID L. GORE

DISSENT: I respectfully dissent from the majority decision and would affirm the Arbitrator's award in its entirety.

Although Petitioner, at trial, offered an explanation in regards to how she believed the accident occurred (which the Arbitrator appropriately noted only served to bring her credibility and claim in to question) there is no doubt from the description of her injury given to her treating physicians that Petitioner did not know why she fell. Consequently Petitioner's fall was unexplained.

Petitioner's unrebutted testimony was that it was necessary for her to use the stairs to perform her work duties. **[*10]** Petitioner testified that she was required to traverse the stairs 15 to 25 times a day. The extent of Petitioner's required use of the stairs in the performance of her job duties placed her at an increased risk of falling and injury.

Accordingly, the manifest weight of the evidence supports the Arbitrator's finding and the Arbitrator's decision should be affirmed in its entirety.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Benefit Determinations > Medical Benefits > General Overview

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