

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

Lauper

2013 IL App (1st) 120253WC

Opinion Filed: March 11, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CHICAGO TRANSIT AUTHORITY,)	Appeal from the Circuit Court
)	of Cook County, Illinois
Appellant,)	
)	
v.)	Appeal No. 1-12-0253WC
)	Circuit No. 11-L-50344
)	
THE ILLINOIS WORKERS')	Honorable
COMPENSATION COMMISSION <i>et al.</i>)	Robert Lopez-Cepero,
(Sylvia Timms, Appellee).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court, with opinion. Justices Hoffman, Hudson, and Stewart concurred in the judgment and opinion. Justice Turner dissented, with opinion.

OPINION

¶ 1 The claimant, Sylvia Timms, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer, Chicago Transit Authority, for injuries she suffered on March 18, 2010.

¶ 2 After a hearing, an arbitrator found that the claimant proved she sustained psychological injuries arising out of and in the course of her employment with the employer and awarded her total temporary disability (TTD) benefits and medical expenses.

¶ 3 The employer filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). A majority of the Commission affirmed and adopted the arbitrator's decision.

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

¶ 5 **FACTS**

¶ 6 The following factual recitation is taken from the evidence presented at the arbitration hearing on July 20, 2010. The 51-year-old claimant testified that she worked for the employer as a bus operator for approximately 3 years. While driving a bus on March 18, 2010, the claimant stopped at a red traffic light at approximately 1:30 p.m. Several passengers exited the bus through both a front door and back door. Several individuals got on the bus. The claimant saw that the traffic light had turned green and proceeded through the intersection. Shortly thereafter, a passenger yelled from the back of the bus that "somebody was chasing and hitting the bus and she thinks he was hit." The claimant stopped the bus. Upon exiting the bus, the claimant saw a person lying near the curb.

¶ 7 After reporting the accident to the employer, the claimant approached the individual. The claimant testified that a man lay in "almost a fetal position" with his mouth moving. The accident victim was removed from the scene by an ambulance. The claimant spoke with police officers and various supervisors employed by the employer. She was told the name of the accident victim. The claimant remained at the scene for approximately four hours.

¶ 8 Thereafter, the claimant was taken back to the employer's garage, where she prepared a written accident report. The claimant testified that, while she was at the employer's garage, she

was told that the accident victim had died. The claimant recalled feeling "[s]haken" and "a little depressed." She testified that a supervisor saw that she was "shaken up" and referred her to "comp psych."

¶ 9 The claimant was removed from work pending a safety investigation. Following a hearing, the employer terminated the claimant effective April 28, 2010.

¶ 10 After the accident, the claimant had flashbacks of the accident victim lying in the street and had difficulty sleeping. She did not seek professional help, attempting to cope with it herself, but her symptoms worsened. The claimant sought help through the employer but was told she was no longer employed by the employer and, therefore, was denied assistance.

¶ 11 On May 28, 2010, the claimant sought treatment with clinical psychologist Dr. Daniel Kelley. The claimant felt depressed "because of the death of a person." Dr. Kelley noted that the claimant experienced severe levels of depressive and anxiety symptoms. He diagnosed the claimant as suffering from an adjustment disorder with mixed anxiety and depressed mood. The claimant underwent psychotherapy and a desensitization program. Dr. Kelley referred her for a medical consultation and prescribed an antidepressant and a sleep aid. The doctor wrote that the claimant is unable to work due to psychological trauma from the accident. The claimant continues to treat with Dr. Kelley.

¶ 12 The parties stipulated that "there was an event that occurred on Thursday, March 18, 2010, at 1:30 p.m. in the afternoon at Ashland and Harrison. This event was a collision between a pedestrian and a CTA bus. Further[,] this CTA bus was being operated by the Petitioner ***. The pedestrian who was identified as James Mentor was dead on arrival at Stroger Hospital

according to this police report No. HS 213893. In lieu of the document the parties have agreed to this stipulation."

¶ 13 Following the hearing, the arbitrator found that the claimant had proven that she sustained psychological injuries arising out of and in the course of her employment with the employer. In support of his finding, the arbitrator stated:

"Although [the claimant] did not request or obtain medical treatment for approximately two months after the accident, the Arbitrator finds her testimony to be both credible and convincing. The mere fact that she thought she would be able to manage the tragedy 'through her own strength' and that she would get better on her own should not and does not defeat her claim. She drove the bus that struck and killed a person. The image of the victim lying curled up on the street, with his mouth silently moving, continued to come back into her mind. This certainly falls within the holding [of *Pathfinder Co. v. Industrial Comm'n*, 62 Ill. 2d 556 (1976)], i.e., she suffered a sudden severe emotional shock traceable to a definite time and place and cause which caused psychological injury or harm within the meaning of the Act. The Arbitrator also finds the unrebutted psychological opinion of Dr. Kelley to be credible."

¶ 14 The employer filed a petition for review of the arbitrator's decision before the Commission. A majority of the Commission affirmed and adopted the arbitrator's decision.

However, the dissenting commissioner concluded that the claimant had failed to prove the immediate onset of an emotional injury as a result of the March 18, 2010, accident.

¶ 15 Thereafter, the employer filed a petition seeking judicial review in the circuit court of Cook County. On December 20, 2011, the circuit court confirmed the Commission's decision. This appeal followed.

¶ 16 ANALYSIS

¶ 17 In Illinois, psychological injuries are compensable under one of two theories, either "physical-mental," when the injuries are related to and caused by a physical trauma or injury (*Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167, 171 (2001)), or "mental-mental," when the claimant suffers a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm *** though no physical trauma or injury was sustained" (*Pathfinder*, 62 Ill. 2d at 563; *Matlock*, 321 Ill. App. 3d at 171). At issue is whether the Commission erred in finding that the claimant established a compensable psychological injury under the "mental-mental injury" theory that our supreme court announced in *Pathfinder*.

¶ 18 Before we decide this question, we must resolve a legal issue regarding the proper interpretation of *Pathfinder*. The parties agree that *Pathfinder* authorizes recovery for mental-mental injuries when the claimant suffers a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological *** harm." *Pathfinder*, 62 Ill. 2d at 563. However, relying upon this court's decision in *General Motors Parts Division v. Industrial Comm'n*, 168 Ill. App. 3d 678, 687 (1988), the employer argues that a claimant may recover under *Pathfinder* only if she proves that a sudden, severe emotional shock caused her to suffer a psychic injury that was "immediately apparent." *General Motors*, 168 Ill. App. 3d at 687.

¶ 19 We disagree. As a preliminary matter, we find *General Motors* inapposite. The case at bar involves a claim of psychological injuries stemming from a *single, traumatic*, work-related incident. Accordingly, it falls squarely within the ambit of *Pathfinder*. *General Motors*, on the other hand, involved a claim of psychological injuries that appeared to have arisen gradually "from a variety of factors," including an argument between the claimant and his supervisor over working conditions (a *non-traumatic* event) and other, non-work-related events that occurred during the months and years following the argument.¹ Thus, because *General Motors* addressed a different type of "mental-mental" claim from the claim at issue here, its relevance is questionable.

¶ 20 In any event, we reject the employer's assertion that a claimant may recover for traumatically induced, mental-mental injuries only when the resulting psychological injury is "immediately apparent." As noted, *Pathfinder* requires a claimant alleging a mental-mental claim to prove that she suffered a "sudden, severe emotional shock traceable to a definite time, place and cause which causes psychological injury or harm." *Pathfinder*, 62 Ill. 2d at 563. That

¹ We have been particularly hesitant to allow recovery for such claims. We have repeatedly noted that "[m]ental disorders which develop over time in the normal course of the employment relationship do not constitute compensable injuries." *Matlock*, 321 Ill. App. 3d at 171; see also *Northwest Suburban Special Education Organization v. Industrial Comm'n*, 312 Ill. App. 3d 783, 788 (2000). Recovery for non-traumatically-induced mental disease is limited to those who can establish that: (1) the mental disorder arose in a situation of greater dimensions than the day-to-day emotional strain and tension which all employees must experience; (2) the conditions exist in reality, from an objective standpoint; and (3) the employment conditions, when compared with the nonemployment conditions, were the major contributory cause of the mental disorder. *Matlock*, 321 Ill. App. 3d at 171; *Northwest Suburban*, 312 Ill. App. 3d 783, 787 (2000); *Runion v. Industrial Comm'n*, 245 Ill. App. 3d 470, 473 (1993). Applying these standards, we have rejected claims for mental disabilities resulting from arguments with coworkers (*City of Springfield v. Industrial Comm'n*, 214 Ill. App. 3d 301 (1991)), disciplinary actions taken by employers (*Esco Corp. v. Industrial Comm'n*, 169 Ill. App. 3d 376 (1988)), and personal matters unrelated to the claimant's work (*Runion*, 245 Ill. App. 3d at 474)).

is all that *Pathfinder* requires. *Pathfinder* does not compel the claimant to prove, in addition, that the psychological injury resulting from the emotional shock was "immediately apparent." Under *Pathfinder*, the *emotional shock* needs to be "sudden," not the ensuing psychological injury. Thus, if the claimant shows that she suffered a sudden, severe emotional shock which caused a psychological injury, her claim may be compensable even if the resulting psychological injury did not manifest itself until some time after the shock. To the extent that *General Motors* holds otherwise, we reject that aspect of the court's holding and decline to follow it.

¶ 21 In rejecting this aspect of *General Motors*, we are not expanding our supreme court's holding in *Pathfinder*. To the contrary, we are merely applying *Pathfinder* as our supreme court intended without imposing any unnecessary or unwarranted limitations on its holding. Contrary to the employer's suggestion, this will not "open the floodgates" to fraudulent or frivolous claims, just as *Pathfinder* itself did not cause that result. We have confidence that the Commission will "continue to be vigilant in the assessment of claims which might be easily fabricated or exaggerated." *Pathfinder*, 62 Ill. 2d at 567. Toward that end, we stress that, in order to prevail on a mental-mental claim, the claimant must present objective evidence supporting inferences of psychological injury, causation, and disability. *Board of Education of the City of Chicago v. Industrial Comm'n*, 83 Ill. 2d 475, 487-88 (1981). We also note that, although not dispositive as a matter of law, evidence that a claimant delayed seeking treatment for alleged psychological injuries for an extended period of time following a work-related accident may still be relevant in a given case. Depending on the facts of the case, such evidence might undermine the inference that the claimant suffered a severe emotional shock that caused a psychological injury.

¶ 22 We now turn to the main question presented in this appeal, *i.e.*, whether the Commission erred in finding that the claimant established a compensable "mental-mental" injury. The parties dispute the standard of review that governs our analysis of this issue. The employer maintains there is no factual dispute or conflicting inferences that can be drawn from the facts, and the only question is whether the undisputed facts satisfy the legal requirements for proving a compensable "mental-mental" injury. Therefore, the employer contends that this case presents a question of law subject to *de novo* review. The claimant agrees that there is no dispute as to the facts; however, she maintains there is a dispute as to the inferences to be drawn from the undisputed facts. She therefore argues that the Commission's decision should not be disturbed unless it is against the manifest weight of the evidence.

¶ 23 We agree with the claimant. The disputed issue presented in this case is whether the claimant suffered a "sudden, severe emotional shock" during the March 18, 2010, accident that produced a psychological injury. Although the facts in this case are undisputed, the facts relevant to the disputed issue are subject to various interpretations and are capable of supporting different reasonable inferences. From the evidence presented during the arbitration hearing, it would be reasonable to infer that the claimant suffered a sudden shock during the bus accident which caused a psychic injury, even though she did not seek treatment for her psychic injury for approximately two months. On the other hand, based on the claimant's failure to seek treatment in a timely manner, it would also be reasonable to infer that the claimant did not suffer a severe emotional shock during the accident.

¶ 24 Because different inferences can be drawn from the evidence presented at the arbitration hearing,² we will not disturb the Commission's decision unless it is against the manifest weight of the evidence. *Builders Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 1009-10 (2003). A decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (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 (2002). It is the function of the Commission to determine the facts, judge the credibility of the witnesses, and draw reasonable inferences from competent evidence. *City of Springfield, Illinois, Police Dept. v. Industrial Comm'n*, 328 Ill. App. 3d 448, 452 (2002). See also *Skidis v. Industrial Comm'n*, 309 Ill. App. 3d 720, 724 (1999) (Commission

² That distinguishes this case from the cases relied upon by the employer, each of which involved pure questions of law susceptible to *de novo* review. For example, in *General Motors Parts Division*, 168 Ill. App. 3d at 687-88, we held that the claimant failed to establish a compensable psychological injury under *Pathfinder* as a matter of law for two reasons. First, the claimant's psychic injury was allegedly caused by an argument between a supervisor and an employee over working conditions, an event that is "not uncommon in the normal workplace environment." *Id.* at 687. Second, the claimant's alleged injury "was caused by a gradual deterioration of his mental processes brought on by a variety of factors, not a single, work-related event or stimulus," as required by *Pathfinder*. Thus, as a matter of law, the evidence presented in *General Motors* failed to satisfy the requirements for a compensable injury prescribed by *Pathfinder*, namely, a sudden, severe shock "precipitated by an uncommon event" which, *by itself*, causes a psychic injury. In this case, by contrast, the claimant has presented evidence suggesting that she suffered a shock caused by the death of a person, and there is no evidence that her resulting psychic injury had any other contributing cause. The other cases cited by the claimant are also distinguishable because they also involved pure questions of law, such as whether mental disorders allegedly caused by ordinary work stresses are compensable under the Occupational Diseases Act (*Chicago Board of Education v. Industrial Comm'n*, 169 Ill. App. 3d 459, 467-69 (1988)), and whether undisputed facts demonstrated that the claimant's injury was caused by a risk attributable to his employment (*Kemp v. Industrial Comm'n*, 264 Ill. App. 3d 1108, 1110-11 (1994)).

decision finding claimant failed to establish a compensable psychic injury not against the manifest weight of the evidence); *City of Springfield v. Industrial Comm'n*, 291 Ill. App. 3d 734, 740 (1997) ("Claimant's unrefuted testimony supports the Commission's conclusion that her supervisor committed repeated sexual assaults against her, and unrefuted medical evidence showed that, as a result, she suffered from post-traumatic stress disorder. It cannot be said, therefore, that the conclusion opposite that of the Commission's is clearly apparent from the record.").

¶ 25 Turning to the merits, the Commission found that the claimant sustained psychological injuries arising out of and in the course of her employment with employer and awarded benefits based upon the "mental-mental" theory of compensation. The employer argues that the Commission's finding was erroneous because the claimant: (1) did not seek immediate professional help; (2) returned to work; (3) resumed use of public transit; and (4) did not witness the accident. We disagree.

¶ 26 In *Pathfinder*, the claimant pulled a coworker's severed hand from a machine, fainted, and subsequently suffered psychological problems. In upholding the Commission's award, the supreme court stated the claimant experienced a sudden, severe emotional shock, which would be the reaction of a person of normal sensibilities who, attempting to aid an injured coworker, reached in and drew a severed hand from the press. *Pathfinder*, 62 Ill. 2d at 567. The court decided that the employee's psychological injuries were compensable under the Act, stating, "[T]here is little to support a rule that allows an award for a claimant *** who is suffering from psychological disabilities caused by an often minor physical injury but denies an award to a claimant with a similar psychological disability brought about, as here, by a sudden, severe

emotional shock and who fortuitously did not sustain any physical injury in his accident."

Pathfinder, 62 Ill. 2d at 564-65. The court determined the employee had sufficiently proved that her injuries were compensable under the Act through the introduction of hospital records showing that she was suffering from a nervous condition upon admission and that she received sedating drugs while hospitalized. The court concluded that these records provided the necessary evidence of the employee's objective symptoms of actual injury. *Pathfinder*, 62 Ill. 2d at 567.

¶ 27 In the instant case, the claimant drove a bus which struck and killed a pedestrian. She watched the pedestrian dying on the side of the road. This is exactly the type of "exceptionally distressing" and "uncommon" work-related experience that may support an award under *Pathfinder*. *General Motors*, 168 Ill. App. 3d at 688-89; see also *Pathfinder*, 62 Ill. 2d at 567; *Matlock*, 321 Ill. App. 3d at 171-72. Moreover, the claimant presented evidence supporting a reasonable inference that, as a result of the accident, she suffered a "sudden, severe emotional shock" which caused a psychological injury. The claimant testified she felt shaken and depressed a few hours after the accident when she was told that the accident victim had died. According to the claimant, a supervisor observed that the claimant was shaken at that time and referred her to "comp psych." Moreover, Dr. Kelley noted that the claimant had experienced severe levels of depressive and anxiety symptoms since the accident, and he opined that the claimant was unable to work due to psychological trauma caused by the accident.

¶ 28 The claimant's failure to seek immediate professional help does not defeat her claim. The claimant testified she thought she would be able to manage the tragedy "through her own strength." When her symptoms worsened, the claimant sought professional help. The claimant testified she was depressed mainly because of the death of a person. The Commission found the

claimant's testimony credible and convincing. Further, Dr. Kelley's diagnosis of adjustment disorder with mixed anxiety and depression was unrebutted by the employer. The Commission's finding that the claimant's delay in obtaining medical treatment was not a bar to recovery given her credible testimony and Dr. Kelley's unrebutted psychological opinion was not against the manifest weight of the evidence.

¶ 29 Contrary to the employer's argument, the claimant did not return to work as a bus operator. Following a hearing, the employer terminated the claimant effective April 28, 2010. Further, Dr. Kelley opined that the claimant was unable to drive a bus as a result of the accident. The fact that the claimant was using public transportation approximately four months after the accident, and following a course of treatment, is of no consequence.

¶ 30 Finally, in response to the employer's argument that claimant's "connection to the accident was remote and tangential" compared to the claimant in *Pathfinder*, we note the claimant in *Pathfinder* did not directly witness the traumatic event. The claimant in *Pathfinder* "turned away from Miss Kapicinski after she had assured the claimant that she was able to operate the machine. Shortly thereafter the claimant heard cries for help; when she turned, she saw that Miss Kapicinski had caught her hand in the press." *Pathfinder*, 62 Ill. 2d at 559. Similarly, in this case, the claimant heard a passenger yell from the back of the bus that "somebody was chasing and hitting the bus and she thinks he was hit." The claimant stopped the bus and, upon exiting, observed the victim lying curled up on the street, with his mouth silently moving.

¶ 31 The evidence in the instant case was sufficient to support a reasonable inference that the claimant experienced a sudden, severe emotional shock traceable to a definite time, place, and

cause, which caused psychological injury or harm. Accordingly, the Commission's finding that the claimant proved that she sustained psychological injuries arising out of and in the course of her employment with employer is not contrary to the manifest weight of the evidence.

¶ 32

CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County which confirmed the Commission's decision, and we remand the case to the Commission for further proceedings.

¶ 34 Affirmed; cause remanded.

¶ 35 JUSTICE TURNER, dissenting.

¶ 36 I respectfully dissent. Here, claimant could only recover if she demonstrated her psychological injury was caused by "a sudden, severe emotional shock traceable to a definite time, place and cause." *Pathfinder*, 62 Ill. 2d at 562, 343 N.E.2d at 916. In *Pathfinder*, 62 Ill. 2d at 559, 343 N.E.2d at 915, the claimant had an immediate reaction of fainting when she pulled the coworker's hand out of the punch press and underwent immediate medical treatment following the event. This court emphasized the limited nature of such compensable, psychological injuries. In *General Motors*, 168 Ill. App. 3d at 687, 522 N.E.2d at 1266, this court concluded the following:

"the supreme court's decision in *Pathfinder* is limited to the narrow group of cases in which an employee suffers a sudden, severe emotional shock which results in *immediately apparent psychic injury* and is precipitated by an uncommon event of significantly greater proportion or dimension than that to which the employee

would otherwise be subjected in the normal course of employment." (Emphasis added.)

¶ 37 In affirming the Commission, the majority rejects *General Motors'* interpretation of *Pathfinder* that the psychological injury must be immediately apparent. *Supra* ¶ 19. I disagree with that rejection as *General Motors'* interpretation of *Pathfinder* has stood as precedential authority for almost a quarter of a century. See *Runion v. Industrial Comm'n*, 245 Ill. App. 3d 470, 472, 615 N.E.2d 8, 9 (1993); *Malec v. W.R. Grace*, Illinois Workers' Compensation Comm'n, No. 07-WC-33638 (Sept. 4, 2012). Moreover, *General Motors'* interpretation is a reasonable reading of the *Pathfinder* decision. The claimant in *Pathfinder* had immediate, objective symptoms supporting a claim of a psychological injury.

¶ 38 Regardless, the majority should not even reach the issue of the validity of *General Motors'* interpretation of *Pathfinder* because the undisputed facts and the only reasonable inference do not show claimant suffered a sudden, severe emotional shock. The majority should have applied a *de novo* standard of review and adopted the reasoning of the dissenting commissioner. Even under the manifest-weight-of-the-evidence standard used by the majority, the Commission's decision should be reversed.

¶ 39 The term "shock" is defined as "a sudden or violent mental or emotional disturbance." Merriam-Webster's Collegiate Dictionary 1079 (10th ed. 2000). The record contains no evidence claimant had any immediate mental or emotional disturbance when she witnessed the victim lying near the curb. As the dissenting commissioner explains, claimant did not witness any contact between the bus and the victim and could not find anyone who did witness the accident. Thus, she had no specific knowledge of what occurred before she stopped the bus. More than

four hours after the accident, she learned of the victim's death, and at that point, she was only visibly shaken and a little depressed. After learning of the victim's death, a supervisor gave her a referral to "comp psych." Despite receiving the referral, she did not seek medical treatment for more than two months after the accident, which was after she had been terminated from her employment. Such facts clearly do not establish a sudden and severe emotional shock as contemplated by our supreme court in *Pathfinder*.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Slyvia Timms,
Petitioner,

vs.

NO: 10 WC 20440

11IWCC0247

Chicago Transit Authority,
Respondent.

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, medical expenses, temporary total disability, 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. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed August 30, 2010, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case is remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the later of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §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.

10264 RJD @ Rad 3/18/11

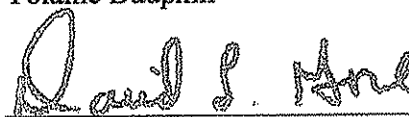
11 IWCC0247

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of \$7,400.00. 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: MAR 11 2011
o-03/02/11
NL/lj
46



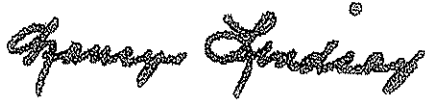
Yofaine Dauphin



David L. Gore

DISSENT

I respectfully disagree with the Majority's Decision affirming and adopting the Arbitrator's Decision finding that Petitioner sustained an accident on March 18, 2010, that arose out of and in the course of her employment. I believe the Majority's Decision is contrary to Pathfinder v. Industrial Commission, 62 Ill. 2d 556, 343 N.E. 2d 913 (Ill., 1976) which envisions a shocking event which produces an immediate disability/injury. Exactly what occurred on March 18, 2010 is not entirely clear. After Petitioner curbed the bus she was driving, she saw someone lying by the curb. However, Petitioner testified she was unable to find anyone on the bus who had witnessed anything. Therefore, Petitioner had no knowledge of exactly what occurred before she stopped the bus. Thereafter, Petitioner did not seek any medical help for almost two and a half months. She acknowledged that she never asked for medical attention until after she had been terminated by Respondent. Interestingly, the same day she sees Dr. Kelley, she signs her Application for Adjustment of Claim. Furthermore, the Application she signs alleges an accident date of April 11, 2010, and not March 18, 2010. April 11, 2010, is also the accident date she references when seen by Dr. Kelley. It is also the day before she was suspended. Dr. Kelley never authored a report correcting the date of accident. In addition to believing the accident occurred on April 11, 2010, Dr. Kelley was also under the impression Petitioner had been told that someone had been hit by the bus. That, however, is not what Petitioner testified to. Petitioner testified that "a lady yelled out from the back of the bus that somebody was chasing the bus or hitting on the bus or something." Dr. Kelley's reports are based upon inaccurate facts. Petitioner has failed to prove the immediate onset of an emotional injury as a result of the events on March 18, 2010. For this reason, I dissent.



Nancy Lindsay

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

TIMMS, SLYVIA

Employee/Petitioner

Case# 10WC020440

11IWCC0247

CHICAGO TRANSIT AUTHORITY

Employer/Respondent

On 8/30/2010, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.18% shall accrue from the date listed above 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.

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

0147 CULLEN HASKINS NICHOLSON ET AL
PATRICK DURKIN
10 S. LASALLE ST SUITE 1250
CHICAGO, IL 60603

0515 CHICAGO TRANSIT AUTHORITY
ARGT KOUTSIKOS
567 W LAKE ST 6TH FL
CHICAGO, IL 60661-1498

STATE OF ILLINOIS)

COUNTY OF COOK)

- Injured Workers' Benefit Fund (§4(d))
- Rate Adjustment Fund (§8(g))
- Second Injury Fund (§8(e) 18)
- None of the above

**ILLINOIS WORKERS COMPENSATION COMMISSION
19(b) ARBITRATION DECISION**

Sylvia Timms
Employee/Petitioner

Case # 10WC020440

Consolidated Cases _____

v.

11IWCC0247

Chicago Transit Authority
Employer/Respondent

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 Gregory Dollison, Arbitrator of the Illinois Workers' Compensation Commission, in the city of Chicago, Illinois, on July 20, 2010. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
- K. Is Petitioner entitled to any prospective medical care?
- L. What temporary benefits are in dispute?
 TPD Maintenance TTD
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS

11IWCC0247

On the date of accident, 03/18/2010, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner *did* sustain an accident that arose out of and in the course of employment.

Timely notice of this accident *was* given to Respondent.

Petitioner's current condition of ill-being *is* causally related to the accident.

In the year preceding the injury, Petitioner earned \$ 44,678.40; the average weekly wage was \$ 859.20.

On the date of accident, Petitioner was 51 years of age, *single* with 0 dependent children.

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of \$ 0 for TTD, \$ 0 for TPD, \$ for maintenance, and \$ 0 for other benefits, for a total credit of \$.

Respondent is entitled to a credit of \$ 0 under Section 8(j) of the Act.

ORDER

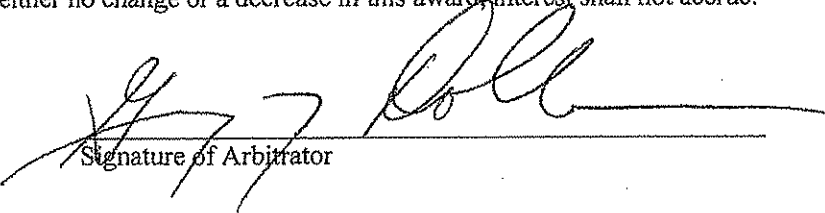
Respondent shall pay Petitioner temporary total disability benefits of \$572.80 per week, commencing May 28, 2010 through July 20, 2010, or a period of 7-5/7 weeks, as provided in Section 8(a) of the Act.

Respondent shall pay reasonable and necessary medical services, pursuant to the medical fee schedule, of \$2832.96 to Dr. Daniel Kelley PhD as provided in Section 8(a) and 8.2 of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

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 at the rate set forth on the *Notice of Decision of Arbitrator* 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

8/30/10
Date

ICarbDec19(b)

AUG 30 2010

FINDINGS OF FACT

Petitioner is a 51 year old bus operator for Respondent, Chicago Transit Authority (CTA). She worked out of the 74th Street Garage. Her job duties included driving a bus, picking up passengers and collecting fares in the Chicago Metropolitan Area.

On March 18, 2010, Petitioner was driving the Ashland route. At approximately 1:30 p.m. while heading northbound at Harrison Street, the bus struck and killed a passenger who had just alighted through the front door. Petitioner immediately called CTA's Control Center. Emergency personnel from the Chicago Police Department, Chicago Fire Department and CTA arrived at the scene within minutes.

Petitioner testified that she got off her bus after speaking with Respondent's control center. She approached the victim who was lying in the street. She stood approximately two feet from him and observed that he was lying on his side, head facing the curb, curled up in "almost a fetal position." Petitioner indicated she observed that the victim's mouth was moving but he was not making any sounds.

Petitioner testified that she spoke with the paramedics on the scene and learned that the victim was being taken to Stroger Hospital. Petitioner also spoke with Chicago Police officers at the scene and gave them information about the accident. Petitioner also spoke with CTA supervisory personnel at the scene. The CTA officials questioned her about the accident and reviewed images from the bus surveillance cameras. Petitioner indicated she remained at the scene of the accident for approximately four hours.

Petitioner testified that she was driven back to the 74th Street garage by a CTA supervisor. She completed accident reports at the garage. She was tested for drugs and alcohol. CTA manager G.M. Rutherford saw that she was "shaken up" and gave her a card for "comp psych." Petitioner was taken out of service as a bus operator while CTA investigated the accident. While at the garage, Petitioner learned that the victim had died.

Petitioner testified that she was administratively separated (i.e. discharged) from CTA on April 27, 2010. Petitioner has not returned to driving a bus.

Petitioner went to the 74th Street garage approximately eight weeks after the accident and spoke with CTA Manager Lucky. She requested medical assistance. Ms. Lucky denied this request for medical treatment. Petitioner testified that she did not seek assistance sooner because she was "trying to cope with it myself."

Petitioner began treating with Dr. Daniel Kelley, PhD on May 28, 2010. Dr. Kelley is a clinical psychologist. Dr. Kelley interviewed Petitioner and performed psychological testing. Dr. Kelley made a preliminary diagnosis of anxiety disorder.

Dr. Kelley is currently treating Petitioner with psychotherapy and a desensitization program. Dr. Kelley referred Petitioner for a medical consultation and Petitioner was prescribed medication including an antidepressant and a medication to help her sleep.

Dr. Kelley wrote that Petitioner is unable to work due to psychological trauma from this accident. Dr. Kelley last saw Petitioner on July 18, 2010 and treatment continues as of the date of the hearing.

Petitioner stated that she was mainly depressed due to the death of a person. She initially did not request treatment because she thought she would be able to deal with the tragedy "through her own strength." Petitioner thought she would get better on her own. However, the image of the victim lying curled up on the street, with his mouth silently moving, continued to come back into her mind. She was depressed. She had trouble sleeping. Petitioner realized she was unable to deal with the tragedy on her own and she requested medical attention from Respondent in May 2010. Respondent did not authorize treatment. Petitioner then sought treatment from Dr. Dan Kelley, PhD.

The Arbitrator takes notice that the parties have stipulated to a collision between a CTA bus, which was operated by Petitioner and a pedestrian, James Mentor, who was dead on arrival at Stroger Hospital, as recited in Chicago Police Report HS213893. The Arbitrator further notes that Dr. Kelley's reports list an incorrect event date of April 11, 2010 but actually should refer to the event date of March 18, 2010.

In support of the Arbitrator's findings relating to Item C (Accident) the Arbitrator finds the following facts:

The Arbitrator finds that Petitioner sustained an accident arising out of and in the course of her employment with Respondent.

Petitioner is a bus operator for Respondent. She drove a bus which struck and killed a pedestrian. As a result of this accident, Petitioner sustained psychological injuries.

In the case of Pathfinder v. Industrial Commission, 62 Ill.2d 556, 343 N.E. 2d 913 (1976) our Supreme Court held that when an employee "suffers a sudden severe emotional shock traceable to a definite time and place and cause which causes psychological injury or harm has suffered an accident within the meaning of the Act..." (343 N.E.2d at 917).

Petitioner testified that she was depressed about the death of the victim. CTA Manager Rutherford saw she was shaken up and offered her a card for "comp psych." The treating psychologist Dr. Kelley has opined that Petitioner is currently unable to drive a bus as a result of this incident.

Although Petitioner did not request or obtain medical treatment for approximately two months after the accident, the Arbitrator finds her testimony to be both credible and convincing. The mere fact that she thought she would be able to manage the tragedy "through her own strength" and that she would get better on her own should not and does not defeat her claim. She drove the bus that struck and killed a person. The image of the victim lying curled up on the street, with his mouth silently moving, continued to come back into her mind. This certainly falls within the holding Pathfinder, i.e., she suffered a sudden severe emotional shock traceable to a definite time and place and cause which caused psychological injury or harm within the meaning of the Act. The Arbitrator also finds the unrebutted psychological opinion of Dr. Kelley to be credible.

Pursuant to the Supreme Courts' holding in Pathfinder, the unrebutted medical opinion of Dr. Kelley and the credible testimony of Petitioner, the Arbitrator finds that Petitioner sustained an accidental injury that arose out of and in the course of her employment with Respondent on March 18, 2010.

In support of the Arbitrator's findings relating to F (Causal Connection) the Arbitrator finds the following facts:

The Arbitrator finds that Petitioner's current condition of ill being is causally connected to the accident of March 18, 2010.

ILLINOIS

Petitioner testified she was depressed mainly because of the death of a person. Dr. Kelley's diagnosis of adjustment disorder was unrebutted by Respondent. Petitioner's delay in obtaining medical treatment is not a bar to recovery given her credible testimony and Dr. Kelley's unrebutted psychological opinion.

In support of the Arbitrator's findings related to J (Medical Services) the Arbitrator finds the following facts:

The Arbitrator adopts the foregoing facts. Accident and causal connection having been established, the Arbitrator awards Dr. Kelley's charges in the amount of \$3,124.00 (Pet. Ex. 2) pursuant to the fee schedule.

In support of the Arbitrator's findings in relation to L (Temporary Total Disability) the Arbitrator finds the following facts:

The Arbitrator adopts and incorporates the foregoing facts and findings regarding accident, causal connection and medical services. The Arbitrator awards Petitioner 7-5/7 weeks temporary total disability for the period of May 28, 2010 through July 20, 2010 in the amount of \$4,418.58, based on the unrebutted opinion of Dr. Kelley that Petitioner was disabled from operating a bus.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

CHICAGO TRANSIT AUTH.

v.

SYLVIA TIMMS & ILL
WORKERS COMP. COMM.

No. 11 L 50344

ORDER

THIS MATTER HAVING BEEN FULLY BRIEFED AND ARGUED, COMING BEFORE THE COURT TODAY FOR STATUS, ALL PARTIES BEING PRESENT: IT IS HEREBY ORDERED
1) THE COURT FINDS THAT THE ILL WORKERS COMPENSATION COMM. FOUND THE PETITIONER TO BE CREDIBLE AND
2) THE DECISION OF THE COMMISSION IS CONFIRMED.

Atty. No.: 02465

Name: PATRICK DUNKIN
CURTIS HASTINGS

Atty. for: DEFENDANT

Address: 10 S. LA SALLE

City/State/Zip: CHICAGO IL

Telephone: 312 ~~332~~ 332-2545

ENTERED: Judge Robert Lopez Cepeda

DEC 20 2011

Dated: Circuit Court, 1627

Judge

Judge's No.