2013 IL 115728

IN THE SUPREME COURT OF THE STATE OF ILLINOIS

(Docket No. 115728)

THE VENTURE—NEWBERG-PERINI, STONE & WEBSTER, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION (Ronald Daugherty, Appellee).

Opinion filed December 19, 2013.

CHIEF JUSTICE GARMAN delivered the judgment of the court, with opinion.

Justices Freeman, Thomas, Karmeier, Burke, and Theis concurred in the judgment and opinion.

Justice Kilbride dissented, with opinion.

OPINION

¶ 1 Ronald Daugherty was a member of Plumbers & Pipefitters Union Local 137 (Local 137) based in Springfield, Illinois. Due to a lack of available work in his local area, Daugherty took a position with The Venture—Newberg-Perini, Stone & Webster (Venture) located approximately 200 miles from his home. Daugherty had temporarily relocated to a nearby motel for the job and was seriously injured in an automobile accident on his way to work. As a result, Daugherty sought workers' compensation benefits.

¶ 2 The arbitrator found that Daugherty failed to show that the injury arose out of and in the course of his employment. The Illinois Workers' Compensation Commission (Commission) reversed the arbitrator's conclusion. On administrative review, the circuit court of Sangamon County set aside the Commission's finding. The appellate court reversed the circuit court's judgment, finding that Daugherty was a "traveling employee" at the time of the injury. The appellate

court denied Venture's petition for rehearing, but granted certification pursuant to Rule 315(a), and this court granted Venture's petition for leave to appeal. Ill. S. Ct. R. 315(a) (eff. Feb. 26, 2010). For the following reasons, we reverse the judgment of the appellate court and affirm the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 At the time of the accident, Daugherty was a resident of Springfield, Illinois, and was a pipefitter and member of Local 137, working out of Springfield. Members of Local 137 were permitted to take jobs outside the local territory, but only when no work was available locally. Due to a lack of available work in the local area, Daugherty took a position with Venture at a plant located in Cordova, Illinois, located about 200 miles from Springfield. While working at the Cordova plant, Daugherty was expected to work 7 days a week, 12 hours a day. Due to the distance and long hours, Daugherty and his fellow union member, Todd McGill, decided to stay at a local motel.

¶ 5 Daugherty and McGill first reported to work at the Cordova plant on March 23, 2006. After completing work that day, the men went to Lynwood Lodge to spend the night. The motel was located about 30 miles from the Cordova plant. The men were scheduled to resume work at 7 a.m. the following day. Around 6 a.m. the next morning, McGill was driving Daugherty to work in McGill's pickup truck. The vehicle skidded on ice while crossing an overpass, and Daugherty suffered serious injuries. As a result of this accident, Daugherty sought workers' compensation benefits.

¶ 6 Daugherty's position with the Cordova plant was to be temporary. Under Local 137's normal policy, members are terminated at the completion of a job and are expected to seek a new position. Daugherty had worked for Cordova on four other short-term positions in the two years prior to the accident.

¶ 7 Daugherty testified that it was his understanding that Venture wanted workers to be within an hour's drive of the plant, so that they were available for work when needed. Daugherty's coworker, McGill, also testified that Venture did not direct workers where to stay and that, while Venture desired its employees to be located close to the plant, the workers were not required to relocate to be closer to the plant. An employee of Venture, Anthony Cahill, testified that Venture derived a benefit from workers residing within the local geographic area due to emergency labor needs. Venture, however, did

not direct workers where to stay or what route to take to work. Daugherty was not reimbursed for travel expenses or compensated for travel time. Cahill noted that only existing employees who were transferred to another location were compensated for travel expenses.

¶ 8 The arbitrator concluded that Daugherty had failed to prove that his injuries arose out of and in the course of his employment. The arbitrator also found that Daugherty did not qualify for the traveling employee exception.

¶ 9 In a divided decision, the Commission reversed the arbitrator's decision, concluding that while ordinarily an accident occurring while an employee travels to work is not considered to be one that arises out of and in the course of employment, two exceptions applied here. First, the Commission found the accident occurred within the course of Daugherty's employment because Daugherty's course or method of travel was determined by the demands and exigencies of the job, rather than his personal preference. The Commission acknowledged that Daugherty was not required to stay in the local area, but found that "as a practical matter," Daugherty needed to have stayed within a reasonable commuting distance from the plant. Second, the Commission found that Daugherty was a "traveling employee" at the time of the accident.

¶ 10 On administrative review, the circuit court found that the Commission misconstrued or misapplied Illinois law and set aside the Commission's findings. The appellate court reversed. 2012 IL App (4th) 110847WC. Relying on this court's decision in *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69 (1975), the majority of the appellate court found that Daugherty qualified as a "traveling employee" and that his injury arose out of the course of his employment. Justice Hudson dissented, finding that Daugherty's injury, occurring during his commute to work, did not arise out of and in the course of his employment. The dissent also disagreed with the majority's application of the traveling employee exception.

¶ 11 ANALYSIS

¶ 12 Venture argues that the appellate court erred in reversing the circuit court. First, Venture maintains that Daugherty was not a traveling employee. Venture focuses on the relevant facts, noting that Daugherty was a temporary employee and Venture did not send Daugherty to work at the Cordova plant. Venture also disputes the Commission's finding that Daugherty was acting under the direction

or control of Venture when he chose to relocate closer to the work site and was injured on the way to work.

¶ 13 Daugherty, however, argues that the Commission's findings should be upheld under both exceptions. Daugherty's position is that he was a traveling employee because he was an employee who was traveling away from his home community for his employer. Daugherty also maintains that his injury arose out of and in the course of his employment because Daugherty's course of travel was determined by the demands and exigencies of the job, rather than his personal preference.

¶ 14 The parties also dispute the applicable standard of review. "Before a reviewing court may overturn a decision of the Commission, the court must find that the award was contrary to law or that the Commission's factual determinations were against the manifest weight of the evidence. [Citation.] On questions of law, review is *de novo*, and a court is not bound by the decision of the Commission. [Citation.] On questions of fact, the Commission's decision is against the manifest weight of the evidence only if the record discloses that the opposite conclusion clearly is the proper result." *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009). Because Daugherty's argument fails under either standard, however, we need not resolve the parties' dispute regarding the standard of review.

¶ 15 Traveling Employee

¶ 16 "The general rule is that an injury incurred by an employee in going to or returning from the place of employment does not arise out of or in the course of the employment and, hence, is not compensable." *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 537 (1981). This court has explained the purpose behind this rule, noting that "the employee's trip to and from work is the product of his own decision as to where he wants to live, a matter in which his employer ordinarily has no interest." *Sjostrom v. Sproule*, 33 Ill. 2d 40, 43 (1965).

¶ 17 An exception applies, however, when the employee is a "traveling employee." "[C]ourts generally regard employees whose duties require them to travel away from their employer's premises (traveling employees) differently from other employees when considering whether an injury arose out of and in the course of employment." *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 68 (1975); *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985).

¶ 18 If a traveling employee is injured, the court then considers whether the employee's activity was compensable. *Wright*, 62 Ill. 2d at 69. This court has found that injuries arising from three categories of acts are compensable: (1) acts the employer instructs the employee to perform; (2) acts which the employee has a common law or statutory duty to perform while performing duties for his employer; (3) acts which the employee might be reasonably expected to perform incident to his assigned duties. Daugherty argues that the third category applies here. Considering the third category, this court has found that traveling employees may be compensated for injuries incurred while performing an act they were not specifically instructed to perform. The act, however, must have arisen out of and in the course of his employment. To make this determination, the court considers the reasonableness of the act and whether it might have reasonably been foreseen by the employer.

¶ 19 The parties primarily rely on two cases: *Wright*, 62 Ill. 2d 65, and *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687 (1993). In *Wright*, an employee, Myrtis Wright, was a field erection supervisor who was frequently required to travel to out-of-state locations and stay there for months at a time. *Wright*, 62 Ill. 2d at 67. In addition to his hourly wage, Wright received *per diem* for traveling expenses as well as mileage reimbursement. *Id.* Wright was working at a job site located in Tennessee and had rented a motel room located near the job site. *Id.* On a Saturday afternoon, Wright was killed in a car accident. *Id.* Testimony during the trial showed that it was unclear as to where Wright was traveling at the time of the accident. *Id.* at 68. This court found that the traveling employee exception applied, noting that "[i]t would be inconsistent to deprive an employee of benefits of workmen's compensation simply because he must travel to a specific location for a period of time to fulfill the terms of his employment and yet grant the benefits to another employee because he continuously travels." *Id.* at 69.

¶ 20 In *Chicago Bridge & Iron*, Danny Reed was hired by the employer and was "periodically required" to travel to various job sites out of state. *Chicago Bridge & Iron*, 248 Ill. App. 3d at 688. Reed had worked exclusively for the employer for 19 years, but his employment was not continuous, as he was terminated at the end of each temporary job and rehired as necessary. *Id.* at 692-93. Reed was compensated for mileage when traveling to work sites. *Id.* at 689. One such job site was located in Minnesota, and Reed stayed in a motel near the job site. *Id.* Reed was injured in a car accident when

driving from the motel to the job location. *Id.* The appellate court found that the traveling employee exception applied. *Id.* at 694.

¶ 21 Courts in Illinois have considered a variety of other examples of traveling employees, including traveling salesmen (*Urban v. Industrial Comm'n*, 34 Ill. 2d 159 (1966)); a field mechanic who traveled to service heavy-duty equipment (*Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567 (1980)); a director of health services for a regional office of education who traveled to meet with local schools (*Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194 (1985)); a union official who traveled to attend hearings and negotiate on behalf of his union (*District 141, International Ass'n of Machinists & Aerospace Workers v. Industrial Comm'n*, 79 Ill. 2d 544 (1980)); a bank manager traveling between two bank branches (*Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC); and a truck driver (*Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113 (2007)).

¶ 22 Prior to applying *Wright* and *Chicago Bridge & Iron* to the instant case, it is helpful to review the relevant facts. In reaching its conclusion, the Commission made the following findings of fact: (1) Daugherty testified that it was his understanding that Venture wanted workers to be within an hour's traveling distance from the plant; (2) union workers were not reimbursed for travel accommodations or compensated for travel time for positions taken outside their local territory (and Venture did not reimburse Daugherty for his travel for this job); (3) Daugherty was not required to take the job at the Cordova plant and would not have been permitted to take the job if his local union had a job available, as union workers could take jobs outside their local territory only if jobs were not available within the local territory; (4) Daugherty had worked on four short-term projects for Venture in 2004 and 2006, and at the end of each project, he was laid off and no longer considered an employee of Venture; (5) Todd McGill, a fellow union member who shared a motel room with Daugherty and was driving the truck involved in the accident, testified that Venture did not make motel arrangements, tell them where to stay or pay for travel expenses. McGill also testified that he was not required to relocate closer to the work site, but acknowledged that Venture desired its employees to be located closer to the plant.

¶ 23 Wright was a permanent employee who was regularly required by his employer to travel out of state. Wright's employer reimbursed him with *per diem* and mileage expenses. Reed, the plaintiff in

Chicago Bridge & Iron, was not a permanent employee, but he had worked exclusively for the employer for 19 years. Like Wright, Reed was reimbursed for his mileage expenses and was "required" to travel for the position. Furthermore, in each of the remaining cases cited above, the employee was regularly employed and directed by his or her employer to travel to a remote location. *Urban v. Industrial Comm'n*, 34 Ill. 2d 159 (1966); *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567 (1980); *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194 (1985); *District 141, International Ass'n of Machinists & Aerospace Workers v. Industrial Comm'n*, 79 Ill. 2d 544 (1980); *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC; *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113 (2007).

¶ 24 Unlike the plaintiff in *Wright*, Daugherty was not a permanent employee of the employer. Nor was Daugherty working for Venture on a long-term exclusive basis. He had worked only four other short-term Venture projects over the two years preceding the accident. Furthermore, nothing in Daugherty's contract required him to travel out of his union's territory to take the position with Venture. As Daugherty testified, he made the personal decision that the benefits of the pay outweighed the personal cost of traveling. Daugherty was hired to work at a specific location and was not directed by Venture to travel away from this work site to another location.[1] Rather, Daugherty merely traveled from the premises to his residing location, as did all other employees. Finally, Venture did not reimburse Daugherty for his travel expenses, nor did it assist Daugherty in making his travel arrangements. Due to these facts, the Commission's conclusion that Daugherty was a traveling employee was against the manifest weight of the evidence.

¶ 25 Not only does the case law fail to support Daugherty's position that he qualified for the traveling employee exception, but the appellate court position raises serious policy concerns. For example, while an employee who chooses to relocate closer to a temporary job site can receive benefits if injured on the way to work, an employee

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[1] Daugherty argues that Venture's home "employment premises" was in Wilmington, Illinois, while this job location was in Cordova, Illinois. Regardless of whether Venture's home location was in Wilmington, Daugherty was hired solely to perform work at the Cordova job site. Therefore, this is the premises at which Daugherty was employed.

who permanently resides close to the job site is not entitled to benefits if injured on the way to work.

¶ 26 Because we conclude that Daugherty was not a traveling employee at the time of the accident, we need not consider whether the injury was compensable.

¶ 27 Demands & Exigencies of the Job

¶ 28 The Commission also found that the accident occurred within the course of Daugherty's employment because Daugherty's course or method of travel was determined by the demands and exigencies of the job, rather than his personal preference.

¶ 29 In *Sjostrom v. Sproule*, 33 Ill. 2d 40 (1965), this court considered a case where the plaintiff was injured in a car accident on the way to work. The court found that the injuries were compensable because "the plaintiff's injuries arose out of and in the course of his employment since his trip to work was 'determined by the demands of his employment rather than personal factors.' " See *Unger v. Continental Assurance Co.*, 107 Ill. 2d 79, 87-88 (1985) (discussing *Sjostrom*). Similar to this case, the plaintiff was riding in a car driven by the plaintiff's coworker. However, unlike the present case, a supervisor directed the plaintiff and the coworker to ride together and the employees were reimbursed for travel costs.

¶ 30 In *Chicago Bridge & Iron*, the appellate court also considered whether Reed's injury arose out of and in the course of employment when he was injured while traveling to work. The court noted that the proper test is whether the "course or method of travel is determined by the demands or exigencies of the job rather than by his own personal preference as to where he chooses to live." *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 693 (1993). In that case, however, the court found that Reed, the plaintiff, was not acting in the course of employment because the employer did not direct Reed's route to work, and Reed was free to choose any route in traveling to work. The court also noted that while Reed was reimbursed for travel expenses, he was not paid for time spent traveling. Therefore, the court concluded that Reed was not in the course of employment when the injury occurred.

¶ 31 Unlike the plaintiff in *Sjostrom*, Daugherty's course and method of travel was not directed by Venture. While Daugherty's decision to stay at a motel closer to the work site was a logical one, as the work site was 200 miles from his home, it was a personal decision. Nothing in Daugherty's contract required him to travel out of his union's

territory to take the position with Venture. Instead, it was Daugherty's personal preference to accept the position and the travel distance that it entailed. The Commission recognized that Venture did not require Daugherty to relocate closer to the job site. While Daugherty testified that it was his understanding that Venture wanted workers to be within an hour's traveling distance from the plant, there was no evidence that this was required or even suggested by Venture. Daugherty's coworker, McGill, testified that Venture did not tell them where to stay and that he was not required to relocate closer to the work site. Also unlike the plaintiff in *Sjostrom*, Daugherty and McGill were not instructed to ride together, but made the personal decision to do so in order to save money.

¶ 32 Daugherty is much more similar to Reed in *Chicago Bridge & Iron*, as Daugherty was free to choose his own route to work. Even more persuasive than in *Chicago Bridge & Iron*, Venture did not reimburse Daugherty for travel costs. Daugherty was simply no different from any other employee who has to drive to work on a daily basis. Therefore, the Commission's finding that Daugherty's method of travel was determined by the demands and exigencies of the job, rather than his personal preference, was against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 While there is no question that Daugherty was seriously injured, the facts of this case do not support Daugherty's argument that he was entitled to workers' compensation benefits. Daugherty made the personal decision to accept a temporary position with Venture at a plant located approximately 200 miles from his home. Venture did not direct Daugherty to accept the position at Cordova, and Daugherty accepted this temporary position with full knowledge of the commute it involved. Daugherty was not a traveling employee.

¶ 35 Additionally, Daugherty's course or method of travel was not determined by the demands and exigencies of the job. Venture did not reimburse Daugherty for travel expenses or time spent traveling. Venture did not direct Daugherty's travel or require him to take a certain route to work. Instead, Daugherty made the personal decision to accept the position at Cordova and the additional travel and travel risks that it entailed.

¶ 36 The appellate court judgment is reversed and the circuit court judgment affirmed.

¶ 37 Appellate court judgment reversed.

¶ 38 Circuit court judgment affirmed.

¶ 39 JUSTICE KILBRIDE, dissenting:

¶ 40 I agree with the appellate court's judgment affirming the Commission's conclusion that Daugherty qualified for workers' compensation benefits because he was a "traveling employee" at the time of the incident and his injuries arose out of and in the course of his employment. Because the majority reverses that judgment and rejects the Commission's decision, I dissent.

¶ 41 Initially, unlike the majority, I would clearly state that a manifest weight of the evidence standard applies here. See *supra* ¶ 14 (deciding not to resolve the parties' dispute regarding the proper standard of review). A reviewing court is permitted to reverse the Commission's decision only when the award is contrary to law or the Commission's factual findings were against the manifest weight of the evidence. While legal questions are subject to *de novo* review, questions of fact are subject to a manifest weight of the evidence standard. *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370 (2009). Elaborating on the proper standard of review, this court explained that "if undisputed facts upon any issue permit more than one reasonable inference, the determination of such issues presents a question of fact, and the conclusion of the Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 60 (1989).

¶ 42 Here, the parties disagree on whether the employer, Venture-Newberg, expected or required Daugherty to stay within a certain proximity to the employment site, and the record contains testimony that permits different reasonable inferences on this point, supporting application of the manifest weight of the standard. *Caterpillar Tractor Co.*, 129 Ill. 2d at 60. In addition, the arbitrator and the Commission reached opposite conclusions after reviewing the evidence, demonstrating that reasonable inferences from the evidence could reasonably yield different conclusions. This provides additional justification for application of a manifest weight of the evidence standard. See *Illinois Valley Irrigation, Inc. v. Industrial Comm'n*, 66 Ill. 2d 234, 239 (1977) (applying manifest weight of evidence standard when arbitrator and the Commission reached contrary conclusions).

¶ 43 Thus, I believe a manifest weight of the evidence standard applies in this case. Under this deferential standard, a reviewing court may reverse the Commission's decision only if the record discloses that the opposite conclusion clearly is the proper result. *Beelman Trucking*, 233 Ill. 2d at 370.

¶ 44 An employee is entitled to workers' compensation benefits for an injury only if the injury arises out of and in the course of his employment. 820 ILCS 305/2 (West 2008); *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989). Generally, an injury incurred by an employee traveling to or from his place of employment is not recoverable because it does not arise out of or in the course of the employment. *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 537 (1981). The justification for this general rule is that "the employee's trip to and from work is the product of his own decision as to where he wants to live, a matter in which his employer ordinarily has no interest." *Sjostrom v. Sproule*, 33 Ill. 2d 40, 43 (1965).

¶ 45 An exception to this rule applies, however, when the employee is classified as a "traveling employee." This well-established exception applies to employees who are required to travel away from their employer's premises. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985); *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 68 (1975); *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545 (2010). Nonetheless, as with all employees, a traveling employee's injuries are compensable only if they arise out of and in the course of his employment. *Hoffman*, 109 Ill. 2d at 199.

¶ 46 In relevant part, acts that an employee might be reasonably expected to perform incident to his assigned duties are considered to arise out of and in the course of employment. *Wright*, 62 Ill. 2d at 69. More specifically, in the context of a traveling employee, this court has explained that "[t]he test for determining whether an injury to a traveling employee arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged and whether it might normally be anticipated or foreseen by the employer." *Wright*, 62 Ill. 2d at 69-70 (citing *David Wexler & Co. v. Industrial Comm'n*, 52 Ill. 2d 506, 510 (1972)). Cognizant of the deferential standard of review and the law governing the "traveling employee" exception, I now detail the evidence considered by the Commission.

¶ 47 At the time of the incident, Daugherty was employed by Venture-Newberg, a company based in Wilmington, Illinois. Venture-

Newberg contracted with Exelon Generation Company, LLC, to provide skilled tradesmen for maintenance or repair work at power plants owned and operated by Exelon. Typically, Venture-Newberg filled Exelon openings with local union tradesmen. When positions could not be filled locally, Venture-Newberg posted the jobs with remote union locations. Thus, when local union tradesmen were unavailable, Venture-Newberg filled the positions with tradesmen who lived outside the area. Necessarily, these individuals must travel to reach the distant work site.

¶ 48 This is precisely what occurred here. At the time of the incident, Daugherty was a member of Local 137 and a pipefitter with 30 years' experience. Daugherty lived in Springfield, Illinois, over 200 miles away from Exelon's Cordova plant. Between 2004 and 2006, Daugherty worked on multiple occasions for Venture-Newberg at various Exelon-owned power plants throughout Illinois, including the Cordova plant, the LaSalle plant, and the Clinton plant. Venture-Newberg hired Daugherty on a temporary basis for each project, and his temporary employment terminated upon completion of each project. Based on this work history, Daugherty had passed the required background check and acquired the specialized skills necessary for that type of work.

¶ 49 In March 2006, Venture-Newburg was unable to fill a position at the Cordova plant locally and sought remote union workers. Daugherty bid for the job and was selected by Venture-Newburg for temporary assignment to a position at the Cordova plant. The position required Daugherty to work 12-hour days, seven days a week.

¶ 50 Daugherty testified that Venture-Newburg required its workers to be "available at just a phone call." Daugherty explained that he needed to stay within a certain distance from the plant because Venture-Newburg might ask him to work early or to work late. Daugherty further testified that he was required to stay within an hour of the plant to fulfill his job duties, and he chose to stay at a motel approximately 30 miles away from the Cordova plant. Daugherty's coworker, Todd McGill, confirmed that Venture-Newberg emphasized the benefit of an employee being local or geographically close. In contrast, Venture-Newberg denied that Daugherty was required to stay within an hour of the plant. Venture-Newburg, however, conceded that it benefitted from having workers who were willing and able to stay within the geographic location of the employment site.

¶ 51 Ultimately, Daugherty and McGill first worked at the Cordova plant for a 12-hour shift on March 23, 2006. The men stayed overnight at a hotel about 30 miles away from the plant. At around 6 a.m. the next day, the two men were involved in a traffic accident on their way to the Cordova plant, and Daugherty suffered significant injuries.

¶ 52 Reviewing this evidence, I agree with the Commission that Daugherty should be considered a traveling employee at the time he sustained his injuries. There can be no question that Daugherty, who lived over 200 miles away from the Cordova plant work site, had to travel away from his employer's premises in Wilmington, Illinois. Even assuming, as the majority concludes in a footnote with no legal analysis, that Cordova, Illinois, the location of the plant, should be considered his employer's premises (*supra* ¶ 24 n.1), Daugherty would have had to travel to that site because he lived 200 miles away in Springfield.

¶ 53 Moreover, Exelon contracted with Venture-Newberg with the express purpose to obtain qualified nonlocal tradesmen from *remote* union locations because of the lack of available qualified local union tradesmen. In other words, Exelon and Venture-Newberg agreed to hire union tradesmen from outside of the area who would necessarily be *required to travel* to the area to work. In fact, as Daugherty's experience reveals, he was required to travel over 200 miles to reach the Cordova plant to complete the job he was hired by Venture-Newberg to perform. By definition, then, Daugherty was required to travel from his employer's premises and qualifies as a traveling employee. See *Wright*, 62 Ill. 2d at 68 (traveling employee exception applies to employees who are required to travel away from their employer's premises).

¶ 54 Of course, concluding that Daugherty was a traveling employee does not end the requisite inquiry. Daugherty can receive workers' compensation benefits for his injuries only if they arose out of and in the course of his employment. *Hoffman*, 109 Ill. 2d at 199. As this court has explained, a traveling employee's injuries arose out of and in the course of his employment if he was engaged in reasonable conduct at the time of his injury and his employer might normally anticipate or foresee that conduct. *Wright*, 62 Ill. 2d at 69-70. Here, Daugherty was injured as he traveled in a vehicle to the Cordova plant from the motel where he was staying while he completed his temporary work assignment outside of his local area. This conduct was entirely reasonable, and his employer, who hired Daugherty with

the express purpose to travel to a remote work site, certainly would have anticipated it. Consequently, in accordance with the test articulated by this court in *Wright*, Daugherty's injuries arose from and in the course of his employment. *Wright*, 62 Ill. 2d at 68.

¶ 55 The appellate court here reached the same conclusion. As the appellate court found, "Venture-Newberg must have anticipated that [Daugherty], recruited to work at Exelon's facility over 200 miles from [his] home, would be required to travel and arrange for convenient lodging in order to perform the duties of his job, and that it was reasonable and foreseeable that he would travel a direct route from the lodge at which he was staying to Exelon's facility." 2012 IL App (4th) 110847WC, ¶ 15.

¶ 56 The majority reverses the appellate court's judgment and rejects the Commission's assessment of the evidence and its related determination that Daugherty was entitled to workers' compensation benefits. *Supra* ¶ 2. Without ever actually stating it, the majority implicitly holds that an opposite conclusion is clearly evident from the record. *Supra* ¶ 14 (declining to identify the proper standard of review but declaring that Daugherty's argument fails under both a *de novo* standard and the more deferential manifest weight of the evidence standard).

¶ 57 For the foregoing reasons, I cannot agree. Instead, I believe the Commission's conclusion is not contrary to the manifest weight of the evidence, and the appellate court's judgment reaching the same conclusion should be affirmed. Accordingly, I respectfully dissent.

1 of 100 DOCUMENTS

JOHN SIMONS, PETITIONER, v. VILLAGE OF VILLA PARK, RESPONDENT,

NO: 07WC 17749

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF DUPAGE

2009 Ill. Wrk. Comp. LEXIS 1357

December 10, 2009

JUDGES: James F. DeMunno; David L. Gore

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, causal connection, notice, medical expenses, and permanent disability and being advised of the facts and law, reverses the Decision of the Arbitrator as stated below and finds that the Petitioner did sustain accidental injuries arising out of the scope and in the course of his employment.

The Petitioner was employed by the Village of Villa Park as a Villa Park Community Service Officer. He handled ordinance complaints, theft reports, various non-criminal in-progress calls, accident reports, parking enforcement and the back up of several officers. He also was involved in several arrests and multiple other duties. (Transcript Pg. 11)

On April 5, 2007, he was on duty at work and was going downstairs to the locker room. He got down to the third step and his right knee gave out causing him to fall down the stairs. There was probably another 7 steps that he fell down. (Transcript Pgs.13-14)

He would take that stairwell which is 20 steps total. There are ten steps then a landing, and another ten [*2] steps. By the time, he was done briefing at the beginning of his shift he would have gone up and down the stairs at least 2 to 4 times. At 6 pm, he would return to the station and have lunch in the lunchroom, which was located down the stairs near the locker room. He would also go down stairs to take his 15-minute break. When he was finished with his shift, he would go back down the stairs and change into his civilian clothing. If he wanted a pop, he would traverse those steps to go downstairs to the lounge and the pop machine. If it was raining, he would go downstairs and get his raincoat. He would also get other equipment he may need. (Transcript Pgs.17-20)

In order to get to those stairs you have to be authorized to be inside the building or be let in by somebody. All the entrances are secured with keypad and swipes. (Transcript Pg. 21)

When his leg gave out while going down the stairs, he fell down seven or eight stairs on the landing. He also felt pain in his lower back. His knee had a sharp pain and began to swell up at that point. His back wasn't able to do normal functions that he had done before the fall. Any type of physical activity he was not able to do after the fall. [*3] (Transcript Pgs. 29-31)

The first person he saw after he fell in April was Tracy Wysoglad. He told her his knee gave out and he fell. He also had a conversation with Lieutenant Schroeder in which he gave him the same history. He doesn't remember exactly when he saw Deputy Chief Budig but he did tell him his knee buckled and he was going to the emergency room. (Transcript Pgs. 53-55)

Petitioner had an accident on January 13, 2007 involving that same knee. He slipped on a patch of ice while on vacation and injured his right knee. Later, he fell on a woodpile and further twisted his right knee. (Transcript Pgs. 45-46)

He saw Dr. Yunez on January 19, 2007 and was referred to Dr. Hadesman on 2/22/07. Dr. Hadesman recommended surgery. He prescribed Norco on 3/20/07 and he refilled it on 4/2/07. (Transcript Pgs. 47-49)

The surgery was scheduled prior to the April 5, 2007 incident. This surgery wasn't done prior to April 5, 2007 because he could not get family leave time until after that date. (Transcript Pgs. 50-51)

Petitioner admitted that he had a conversation with Janet Binder prior to the April 5, 2007 date regarding his sick leave and vacation time and his need to schedule the surgery. [*4] (Transcript Pg. 57)

Subsequent to the April 5, 2007 date, Dr. Hadesman had an MRI done on Petitioner's right knee. This April 17, 2007 MRI revealed that the undersurface tear posterior horn lateral meniscus and tiny additional tear at the junction between inner third of the posterior horn and body of the lateral meniscus were unchanged from earlier in 2007. (Petitioner's Exhibit 1)

On May 2, 2007, Dr. Hadesman performed surgery to repair a right knee large complex bucket handle tear of the lateral meniscus and chondromalacia. (Petitioner's Exhibit 1)

Subsequent to this surgery, the Petitioner noticed an increase in his right knee pain after he slipped while on the porch at home and his leg went down on the step. Dr. Hademan felt that P should have a diagnostic arthroscopic examination. On August 2, 2007 after the diagnostic arthroscopic exam, which resulted in two sutures anchors being removed, was completed, Dr. Hadesman noted that Petitioner continues to do very well with regards to the knee. He denied any locking or giving way of the knee and indicated that he felt great. The Doctor felt Petitioner was able to perform all of his normal activities of daily living and could return [*5] to work full duty. He cautioned the Petitioner not to partake in any contact sports until full muscle strength has been obtained. (Petitioner's Exhibit 1)

On 5/1/08, the Doctor notes that Petitioner's right knee was doing well until 3 weeks ago when he began experiencing pain exacerbated by activity and ameliorated by rest. He apparently sustained a twisting injury to his right knee while playing softball against medical advice. He was attempting to run to first base. (Petitioner's Exhibit 1)

In regards to his lower back complaints, Petitioner testified that he never had them prior to April 5, 2007. Dr. Yunez had a lumbar MRI performed on April 17, 2007. It revealed that there is some hypertrophy of the facet joints posteriorly at L4-5 and L5-S1. There is no focal disk herniations and spinal stenosis seen. (Petitioner's Exhibit 2)

Dr. Yunez continues to treat Petitioner for his lower back problems. (Transcript Pgs. 42-44)

The Commission finds that Petitioner's use of the stair way falls within the "Personal Comfort" doctrine and therefore arises out of the scope and course of his employment. Petitioner testified that he went up and down the staircase in order to go to the police locker [*6] room, have lunch or take his personal breaks. He further testified that he would go up and down the staircase so that he can buy a soda; get a raincoat, and other equipment he may need to do his job.

In support of said decision, the Commission cites *Illinois Consolidated Telephone Co. v Industrial Commission 314 Ill.App. 3rd 347 (2000)* In that case the Petitioner was injured when she fell descending steps after she used the washroom. The Arbitrator found that claim compensable because it was an unexplained fall. However, the Appellate court used the personal comfort doctrine. In their view, P was using the washroom to meet the demands of personal health. Since the stairs were the only means of accessing the restroom. P was exposed to a greater risk than the public because she was continually forced to use stairs to seek personal comfort during her workday.

In this case, Petitioner was engaged in employment in a place where he had a reasonable right to be and was exposed to a greater risk than the general public because he was continually forced to use the stairway to seek personal comfort during his workday. He was also required to use the stairway to [*7] complete work related activities.

However, the Commission further finds that Petitioner's right knee condition is not causally connected to the accident on April 5, 2007. It is clear from Dr. Hadesman's right knee MRI that his condition after April 5, 2007 was no worse off than it was prior to that date. It is also clear that Petitioner's surgery, which was performed on May 2, 2007, was scheduled prior to the April 5, 2007 date.

Therefore, the Commission finds that the two surgeries performed on the Petitioner's right knee are not causally connected to the accident in question.

The Commission does find that Petitioner's lower back problems are causally connected to the accident in question. Petitioner, through his own testimony, clearly established that he had no lower back problems prior to April 5, 2007.

He still has constant lower back pain. This varies depending on his physical activities. When he sits for long periods of time, his back gets sore. He has pain doing various activities around his home such as lifting heavy materials. (Transcript Pgs. 39-41)

The Commission finds that Petitioner sustained a loss of use of 5% to the person as a whole as a result of the injuries to [*8] his lower back.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 456.43 per week for a period of 25 weeks, as provided in § 8 (d) (2) of the Act, for the reason that the injuries sustained caused the permanent partial loss of use to the person as a whole to the extent of 5%.

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.

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: DEC 10 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION 19(b) 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 **Joann M. Fratianni**, arbitrator of the Commission, in the city of [*9] **Wheaton**, on **September 17, 2008** and **October 8, 2008**. 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
C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
E. Was timely notice of the accident given to the respondent?
F. Is the petitioner's present condition of ill-being causally related to the injury?
J. Were the medical services that were provided to petitioner reasonable and necessary?
K. What amount of compensation is due for temporary total disability?
L. What is the nature and extent of the injury?

FINDINGS

. On **April 5, 2007**, the respondent **Village of Villa Park, *was*** operating under and subject to the provisions of the Act.

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

. On this date, the petitioner ***did not*** sustain injuries that arose out of and in the course of employment.

. Timely notice of this alleged accident ***was*** given to the respondent.

. In the [*10] year preceding the alleged injury, the petitioner earned $ **39,557.20**; the average weekly wage was $ **760.72**.

. At the time of alleged injury, the petitioner was **36** years of age, ***married*** with **two** children under 18.

. Necessary medical services have in ***part*** been provided by the respondent.

. To date, $ **4,610.88** has been paid by the respondent in full salary and $ **0** for TTD and/or maintenance benefits.

ORDER

. The petitioner failed to prove that he sustained accidental injuries that arose out of and in the course of his employment by the respondent on April 5, 2007.

. The petitioner further failed to prove that the condition of ill-being complained of was due to an accidental injury which arose out of and in the course of his employment by respondent.

. All claims for compensation made by petitioner are thus hereby denied.

. The respondent sall pay the further sum of $ **n/a** for necessary medical services, as provided in Section 8(a) of the Act.

. The respondent shall pay $ **n/a** in penalties, as provided in Section 19(k) of the Act.

. The respondent shall pay $ **n/a** in penalties, as provided in Section 19(l) of the Act.

. [*11] The respondent shall pay $ **n/a** in attorneys' fees, as provided in Section 16 of the Act.

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 JOANN M. FRATIANNI

January 16, 2009

Date

JAN 28 2009

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

Petitioner on April 5, 2007 was employed by the respondent as a Community Service Officer. On that date, petitioner fell down some stairs leading to the basement level of the police station to which he was assigned. Petitioner testified that he fell because his right knee buckled and that he was not carrying [*12] anything or rushing at the time. In addition, petitioner testified that no stair defects existed nor any foreign substances such as water were present.

Prior to this fall, petitioner on January 13, 2007 slipped on a patch of ice and injured his right knee while at his vacation home in Wisconsin. Later that same day, he fell off a wood pile and further twisted his right knee.

Petitioner first sought medical treatment following his vacation home falls on January 17, 2007 at the emergency room of Elmhurst Memorial Hospital, and the saw Dr. Yunez, his family physician, on January 19, 2007. Dr. Yunez prescribed an MRI which was performed on January 30, 2007, and which revealed complex tears to the ligaments of the right knee. Petitioner was then referred to see Dr. Hadesman, an orthopedic surgeon.

Petitioner saw Dr. Hadesman on March 6, 2007, who discussed and recommended surgery to the right knee. At that time, surgery was scheduled for May 2, 2007. Petitioner testified that respondent posts vacation, sick and personal time for the next fiscal year on May 1, 2007 and that he further discussed this matter with Ms. Janet Binder concerning an application for medical leave of absence for [*13] surgery. In the interim, after surgery was prescribed, petitioner continued to work for respondent as a Community Service Officer.

Following his fall on the steps on April 5, 2007, petitioner continued treatment with Dr. Yunez and Dr. Hadesman. A repeat MRI performed on April 17, 2007 was reported to be unchanged from the first MRI performed on January 30, 2007.

In *Nabisco Brands v. Industrial Commission, 266 Ill.App.3d 1103 641 N.E.2d 578, 204 Ill.Dec. 354 (1994)* the Appellate Court found that the act of walking down stairs at an employer's place of business by itself does not establish a risk greater than those faced outside the work place.

In addition, falls resulting from "idiopathic" conditions are generally considered to be personal and not related to employment, see *Consolidated Telephone Company v. Industrial Commission, 314 Ill.App.3d 347; 732 N.E.2d 49; 247 Ill.Dec. 333 (2000).* The fall in the case before this Arbitrator does not appear to be idiopathic in spite of respondent's arguments.

In *Elliot v. Industrial Commission, 153 Ill.App.3d 328;* [*14] *505 N.E.2d 1062; 106 Ill.Dec. 271 (1987),* a correctional officer for Cook County fell while walking down a fight of stairs in a prison. An accident report submitted by that claimant indicated that his right leg gave way while going down the steps. The Appellate Court found that there was no evidence that the stairs themselves were unique to the claimant's employment and that they did not constitute a danger of injury.

Based upon the above, the Arbitrator finds that petitioner failed to prove that he sustained an accidental injury which arose out of and in the course of his employment by respondent on April 5, 2007. In addition, petitioner failed to prove that the condition of ill-being complained of are causally related to any acts of employment in this case as there is no risk unique to his employment in this particular case.

E. Was timely notice of the accident given to the respondent?

Respondent's witnesses all testified that they were aware that the petitioner's right leg gave way causing him to fall down the stairs on April 5, 2007.

Based upon the above, the Arbitrator finds that respondent received timely notice [*15] of this alleged accidental injury as defined by the Act.

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

See findings of this Arbitrator in "C" above.

Based upon said findings, the Arbitrator further finds that petitioner failed to prove that the condition of ill-being complained of to the right knee was causally related to an alleged accidental injury occurring on April 5, 2007.

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

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims for medical expense benefits made by petitioner are hereby denied.

K. What amount of compensation is due for Temporary Total Disability?

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings, all claims for temporary total disability benefits made by petitioner are hereby denied.

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

See findings of this Arbitrator in "C" and "F" above.

Based upon said findings all claims for permanent partial disability benefits made by petitioner are hereby denied.

DISSENTBY: MARIO BASURTO

DISSENT: DISSENT

I respectfully [*16] dissent with the opinion of the majority as the facts record, and law overwhelmingly support affirming the decision of the arbitrator. The Petitioner was walking down stairs when his knee gave out. This is not an unexplained fall. The Petitioner testified that he fell because his right knee buckled. There is nothing about work that contributed to his fall. He was not carrying anything or rushing. He was merely walking down the stairs when his knee buckled. Applying the personal comfort doctrine in this instance puts an unfair burden on the respondent.

There is also no mystery as to why his knee buckled. The alleged date of accident is April 5, 2007. Prior to this date, the Petitioner injured his right knee on January 13, 2007. This injury occurred at his vacation home. An MRI taken on January 30, 2007 revealed complex tears to the ligaments of the right knee. Surgery was both recommended and scheduled for May 2, 2007. The Petitioner had torn ligaments, surgery scheduled, walked down stairs and his knee gave out. His knee gave out because he injured it on vacation. He was not rushing or carrying anything. There is no evidence of any defect in the stairs or with the lighting. Walking [*17] down stairs, his knee, which had torn ligaments and was scheduled for surgery, gave out.

In, *Elliot v. Industrial Commission, 153 Ill.App.3d 328; 505 N.E.2d 1062; 106 Ill. Dec. 271 (1987),* a correctional officer fell while walking down a flight of stairs in a prison. The accident report that he submitted indicated that his leg gave way while going down the steps. The Appellate Court found that there was no evidence that the stairs themselves were unique to the claimant's employment, and did not constitute a danger of injury. That case is directly on point. There was nothing defective or unique about the stairs. The fall happened because his knee, which was already scheduled for surgery, buckled. The act of walking down stairs at an employer's place of business does not establish a risk greater than those faced outside the work place. *Nabisco Brands v. Industrial Commission, 266 Ill.App.3d 1103 641 N.E.2d 578, 204 Ill.Dec 354 (1994).*

A finding of accident is against the manifest weight of the evidence. The arbitrator's decision was well reasoned [*18] and should be affirmed.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDIAdministrative ProceedingsClaimsTime LimitationsNotice PeriodsWorkers' Compensation & SSDICompensabilityCourse of EmploymentGeneral OverviewWorkers' Compensation & SSDICompensabilityInjuriesAccidental Injuries

2013 IL App (2d) 130038WC
No. 2-13-0038WC
Opinion filed December 31, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

VILLAGE OF VILLA PARK,	)	Appeal from the Circuit Court of
	)	Du Page County.
Appellant,	)	
	)	
v.	)	No. 10-MR-000027
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION *et al.*	)	Honorable
	)	Kenneth L. Popejoy,
(John Simons, Appellee).	)	Judge, Presiding.

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

OPINION

¶ 1 The Village of Villa Park (Village), appeals from an order of the circuit court confirming a decision of the Illinois Workers' Compensation Commission (Commission) that awarded the claimant, John Simons, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), after finding that his injury arose out of and in the course of his employment. For the following reasons, we affirm the judgment of the circuit court.

¶ 2 The following facts are taken from the evidence presented at the arbitration hearing conducted on September 17, 2008, and October 8, 2008. The claimant testified that he was

employed by the Village as a Community Service Officer. His duties included handling ordinance complaints, theft reports, various noncriminal in-progress calls, accident reports, parking enforcement, police officer backup, and other duties.

¶ 3 On April 5, 2007, the claimant was at work and on duty in the police station to which he was assigned. Around 6 or 7 p.m., he was upstairs in the watch commander's office for a briefing, after which the claimant and another officer began walking towards the back side of the building. The claimant stated that he turned and started walking down the rear stairwell to the locker room on the lower level. When he reached the third step, his right knee "gave out," causing him to fall down about seven stairs to the landing below, sustaining injuries to his right knee and lower back.

¶ 4 The claimant testified that the back stairwell consisted of about 10 steps, a landing, and then another 10 steps to the lower level. The lower level contained the locker rooms, the briefing room, the lunch area, and the shooting range. The locker rooms were for the use of the police officers and were not open to the general public. The claimant described the lower level as a secured area and stated that the building entrance was accessible only with a pass key.

¶ 5 On a typical work day, the claimant would enter the building through the back door and descend the stairs to the locker room in order to change from his civilian clothes to his uniform. He would walk back up the stairs to the mailbox area to check for any pertinent information, then return downstairs to the lower level for his briefing meeting. The claimant testified that, before his shift even began, he would have traversed the back stairs at least two to four times. At the end of the day, the claimant would again descend the stairs to the locker room to change into his civilian clothes. According to the claimant, during most days, he would also traverse the stairs to go to the lunch

room for his breaks or lunch to get a soda, or to get rain gear or other equipment he needed for his duties.

¶ 6 The claimant described an earlier accident which injured his right knee. On January 13, 2007, he was at his vacation home in Wisconsin when he slipped on a patch of ice. Later that day, he fell off of a pile of wood and twisted the same knee. After one or two days, his knee still did not feel normal. According to the claimant, he then informed his supervisors about his injury and left to go to Elmhurst Hospital, where he was treated by his personal physician, Dr. Karim Yunez. An MRI was subsequently ordered which revealed a small joint effusion with complex tears to the anterior horn, posterior horn and body of the lateral meniscus. Dr. Yunez referred the claimant to Dr. William Hadesman, an orthopedic surgeon. On March 6, 2007, based upon the results of the MRI, Dr. Hadesman recommended that the claimant undergo knee surgery. The claimant agreed, and the surgery was scheduled for May 2, 2007. Dr. Hadesman also prescribed Norco for the claimant's pain. The claimant subsequently returned to regular duty at work while waiting to undergo the recommended knee surgery.

¶ 7 The claimant testified that the injury to his right knee on January 13, 2007, was the only injury he sustained to the knee prior to his fall on April 5, 2007. He described his knee pain following the events of January 13, 2007, as intermittent and not incapacitating, but testified that when he engaged in strenuous activity, he would feel a burning, sore sensation.

¶ 8 Robert Budig testified that he was employed by the Village as the Deputy Chief of Police and that he worked in the same police station as the claimant. According to Budig, on numerous occasions during the period between January 13, 2007, and April 5, 2007, he observed the claimant walking with a limp. Budig discussed the limp with the claimant, who told him that it was caused

by the fall at his cabin in January. Budig's testimony was contradicted by that of Officer Scott Schroeder, who testified that he did not notice the claimant limping prior to the April 5 accident.

¶ 9 The claimant stated that, on April 5, 2007, as he began descending the steps, he "knew something was wrong." His knee then gave out in a way that it never had before. He stated that, after falling down the stairs and impacting the landing, he felt pain in his lower back and a sharp, throbbing pain in his knee, which began to swell. The claimant immediately sought treatment in the emergency room at Elmhurst Hospital. The following day, he saw Dr. Yunez for his back pain. He subsequently returned to Dr. Hadesman, who, on April 17, 2007, prescribed a lumbar MRI and a repeat MRI for his knee. The MRI on the claimant's knee disclosed an undersurface tear in the posterior horn of the meniscus which was unchanged from the previous scan. The lumbar MRI disclosed some hypertrophy of the facet joints posteriorly at L4-L5 and L5-S1 and some focal disc herniation and spinal stenosis, but no significant disc desiccation, bulging or herniation The claimant testified that he was given authorization to be off of work by both Dr. Yunez for his back condition and Dr. Hadesman for his knee.

¶ 10 The claimant testified that, after the April 5 fall, he was no longer able to function the way he had previously. He suffered a loss of range of motion in his knee and initially walked with a limp. According to the claimant, he had never injured his back prior to the April 5 fall. He indicated that, prior to the April 5 fall, he was experiencing pain at a level of 1 or 2 out of 10 and that, after the fall, the pain was elevated to an 8 or 9. The combination of the injury to his back and knee prevented him from performing any type of physical activity.

¶ 11 The claimant testified that, at the time of the hearing, he suffered from constant back pain which varied depending on the level of his physical activity. If he sat for long periods of time, he

had to get up and stretch because his back is sore. He testified that his knee also becomes sore and needs to be stretched out when he is stationary for long periods. The claimant stated that he is no longer able to perform various activities around his home, such as those requiring heavy lifting, and that he is no longer able to run or squat. The claimant testified that, prior to the April 5 fall, he was able to run, squat, and suffered none of the above limitations. After the claimant's May 2, 2007, right knee surgery, Dr. Yunez prescribed physical therapy for the claimant's back. According to the claimant, the prescribed therapy seemed to hurt more than it helped, so he discontinued the treatment. The claimant was prescribed Vicodin for pain, which he took only on an as-needed basis. The claimant returned to full duty on August 6, 2007.

¶ 12 At the conclusion of the hearing, the arbitrator found that, while the claimant's fall did not appear to be idiopathic in nature, the act of walking down stairs by itself did not establish a risk greater than those faced outside the work place. Thus, the arbitrator concluded that the claimant failed to prove that his injuries arose out of and in the course of his employment.

¶ 13 In a decision with one commissioner dissenting, the Commission reversed the arbitrator's decision as to the claimant's back injury only, finding that it was caused by an accident arising out of and in the course of his employment. The Commission reasoned that, at the time of the April 5 fall, the claimant's use of the stairs fell within the "personal comfort doctrine" and, therefore, arose out of and in the course of his employment. The Commission focused on the claimant's testimony that he used the stairs numerous times per day in order to access the police locker room and for personal breaks. Further, the Commission concluded that the claimant's necessary and repeated use the stairs for his employment exposed him to a greater risk than the general public. With regard to his knee, however, the Commission found that the claimant's injury and subsequent surgery were

not causally related to his workplace accident of April 5, 2007, but rather caused by his fall on January 13, 2007. The Commission pointed out that the second MRI of the claimant's knee reflected no change from the original MRI on March 6, 2007. Accordingly, the Commission ordered the Village to pay the claimant PPD benefits in the amount of $456.43 per week for a period of 25 weeks under section 8(d)(2) of the Act, reflecting the claimant's loss of 5% of the person as a whole. 820 ILCS 305/8(d)(2)(West 2006).

¶ 14 The dissenting commissioner was of the opinion that the evidence did not support the majority's finding because the claimant testified he fell due to his knee buckling. He explained that no evidence indicated that the stairs were defective, that the claimant was carrying anything related to his employment when he fell, or that he was rushing down the stairs for any work-related reason. Rather, the dissenting commissioner opined that the evidence supported a finding that the claimant fell because of his preexisting knee condition and that the act of walking down the stairs at work did not expose the claimant to a risk greater than that faced by the general public.

¶ 15 The Village sought judicial review of the Commission's decision in the circuit court of Du Page County. On October 1, 2010, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 16 On appeal, the Village argues that the Commission's determination that the claimant's back injury arose out of a risk inherent in his employment is against the manifest weight of the evidence. Specifically, the Village contends that the Commission erred in relying on the personal-comfort doctrine because there was no evidence that the claimant's use of the stairs was related to anything necessary for his health or comfort. The Village also contends that the Commission erred in

determining that the claimant's daily, frequent use of the stairs exposed him to a greater risk than that to which the of the general public is exposed when traversing stairs. We disagree.

¶ 17 To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered an injury which arose out of and in the course of his employment. *Sisbro, Inc. v. Indus. Comm'n*, 207 Ill. 2d 193, 203-04, 797 N.E.2d 665 (2003). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n,* 131 Ill. 2d 478, 483, 546 N.E.2d 603 (1989).

¶ 18 "In the course of employment" refers to the time, place and circumstances surrounding the injury, meaning that, generally, the injury must occur within the time and space boundaries of the employment. *Sisbro*, 207 Ill. 2d at 203. In this case, the claimant was working in the police station to which he was assigned at the time of his fall on April 5, 2007. Consequently, there is no dispute on the question of whether his injury occurred "in the course of" his employment.

¶ 19 Additionally, however, the injury must also "arise out of" the employment. To satisfy the "arising out of" requirement, "it must be shown that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203. "Stated otherwise, 'an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties.' [Citations.] A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Sisbro*, 207 Ill. 2d at 204 (quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill.2d at 58). The question of whether a causal relationship exists

between a claimant's employment and his workplace injury is a question of fact to be resolved by the Commission (*Certi-Serv, Inc. v. Industrial Comm'n,* 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984)), and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence (*Orsini v. Industrial Comm'n,* 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987); *Caterpillar, Inc. v. Industrial Comm'n,* 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992)).

¶ 20 "There are three categories of risk an employee may be exposed to: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics." *Illinois Institute of Technology Research Institute v. Industrial Comm'n,* 314 Ill. App. 149, 162, 731 N.E.2d 795 (2000). A fall caused by a weak knee is a personal risk. *Illinois Consolidated Telephone Company v. .Industrial Comm'n,* 314 Ill. App. 347 352-53,, 732 N.E.2d 49 (2000) (Rakowski, J., specially concurring.). Injuries resulting from a fall caused by some personal weakness of the claimant, such as a weak knee, are not compensable under the Act unless the claimant's employment significantly contributes to the injury by placing him in a position of greater risk of falling. *Stapleton v. Industrial Comm'n,* 282 Ill. App. 3d 12, 16, 668 N.E.2d 15 (1996). Falling while traversing stairs is a neutral risk, and the injuries resulting therefrom generally do not arise out of employment. *Illinois Consolidated Telephone Company,* 314 Ill. App. at 353. As with personal risks, however, an exception to noncompensability under the Act exists where the requirements of the claimant's employment create a risk to which the general public is not exposed. *Id.* "The increased risk may be qualitative *** or quantitative, such as where the claimant is exposed to a common risk more frequently than the general public." *Id.* We believe that the facts of this case support the Commission's finding that the claimant's fall and

resulting injury arose both out of and in the course of his employment with the Village and that its holding in this regard is not against the manifest weigh of the evidence.

¶ 21 The evidence of record supports the Commission's finding that the claimant was "continually forced to use the stairway" both for his personal comfort and "to complete his work related activities." Specifically, the evidence established that the claimant was required to traverse the stairs in the police station a minimum of six times per day. This fact, coupled with evidence that the claimant informed his superiors, prior to his fall on April 5, 2007, that he had injured his knee and the testimony of Deputy Chief Budig that he had seen the claimant walk with a limp on numerous occasions prior to April 5, 2007, certainly supports the inference that the Village required the claimant to continuously traverse the stairs in the police station, knowing that he had an injured knee. These facts are more than sufficient to support both the conclusion that the claimant's employment placed him in a position of greater risk of falling, satisfying the exception to the general rule of noncompensability for injuries resulting from a personal risk, and that the frequency with which the claimant was required to traverse the stairs constituted an increased risk on a quantitative basis from that to which the general public is exposed.

¶ 22 In passing, the Village also argues in its brief that the Commission's finding that the claimant's low back injury is directly and causally related to his work injury on April 5, 2007, is against the manifest weight of the evidence. Its argument in this regard is grounded solely upon the proposition that the claimant's injury did not arise out of his employment; a proposition we have rejected for the reasons stated above. Consequently we also reject its argument in this context.

¶ 23 Based upon the foregoing analysis, we affirm the judgment of the circuit court of Du Page County which confirmed the Commission's decision.

¶ 24 Affirmed

*314 Ill. App. 3d 347, *; 732 N.E.2d 49, **;*
*2000 Ill. App. LEXIS 483, ***; 247 Ill. Dec. 333*

ILLINOIS CONSOLIDATED TELEPHONE COMPANY, Appellant, v. THE INDUSTRIAL COMMISSION et al. (Linda Budd, Appellee).

NO. 5-99-0020WC

APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT, INDUSTRIAL COMMISSION DIVISION

314 Ill. App. 3d 347; 732 N.E.2d 49; 2000 Ill. App. LEXIS 483; 247 Ill. Dec. 333

June 15, 2000, Filed

PRIOR HISTORY: [*1]** Appeal from the Circuit Court of Montgomery County. No. 98-MR-29. Honorable David W. Slater, Judge, presiding.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employer sought review of the Circuit Court of Montgomery County' (Illinois) decision, affirming appellee commission's grant of disability benefits to claimant employee, finding claimant's injury, which occurred when she fell on stairs while going to the restroom, was within the scope of her employment.

OVERVIEW: Claimant was a 38-year-old office worker who had worked for employer for 23 years. Claimant had left her work area on the first floor and gone upstairs to the second floor to use the restroom. Claimant fell while descending steps and fractured her left ankle. Appellee commission found the accident arose out of her employment and awarded temporary total disability, medical expenses, and permanent partial disability. Appellant employer sought review. The court affirmed, finding claimant was within the scope of her employment when she fell. There was no women's restroom on the first floor and the stairs were the sole means of going and coming from the restroom. There were handrails along the stairs but not on the landing between the flights. The court found the personal-comfort doctrine was applicable. There was nothing unreasonable about claimant going to the restroom, which was within those acts considered incidental to employment.

OUTCOME: Judgment affirmed because claimant's act of going to the restroom was incidental to her employment under the personal-comfort doctrine; thus she was entitled to workers' compensation benefits.

CORE TERMS: claimant's, unexplained, exposed, idiopathic, general public, compensable, stair, injury arose, floor, risk of injury, landing, comfort, arbitrator's, restroom, manifest, course of employment, increased risk, falling, compensability, industrial, incidental, traversing, decedent, worn, shoes, case law, work place, concurrence, inaccurate, positional

LEXISNEXIS® HEADNOTES Hide

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

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

HN1 If more than one inference may be drawn from the undisputed facts on any issue, such an issue presents a question of fact, and the conclusion of the Industrial Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence. The court applies the manifest weight of the evidence standard. In order for the decision to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. More Like This Headnote | *Shepardize:* Restrict By Headnote

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

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

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

HN2 In order for accidental injuries to be compensable, a claimant must show such injuries arose out of and in the course of his or her employment. Arising out of refers to the requisite causal connection between the employment and the injury. In other words, the injury must have had its origins in some risk incidental to the employment. In the course of refers to the time, place, and circumstances under which the accident occurred. The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Industrial Commission, and the Industrial Commission's determination thereof will not be set aside unless the decision is contrary to the manifest weight of the evidence. More Like This Headnote | *Shepardize:* Restrict By Headnote

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

HN3 A reviewing court can affirm the Industrial Commission's decision if there is any legal basis in the record to support its decision, regardless of the Industrial Commission's findings or reasoning. More Like This Headnote | *Shepardize:* Restrict By Headnote

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

Workers' Compensation & SSDI > Coverage > Employment Relationships > Casual Employees

HN4 According to the personal-comfort doctrine, an employee, while engaged in the work of his or her employer, may do those things that are necessary to his or her health and comfort, even though personal to himself or herself, and such acts will be considered incidental to the employment. Using the restroom to meet the demands of personal health or comfort certainly falls within those acts considered incidental to the employment and therefore is considered to be in the course of the employment. Incidental acts are not within the course of employment only if done in an unusual, unreasonable, or unexpected manner. More Like This Headnote | *Shepardize:* Restrict By Headnote

JUDGES: JUSTICE RARICK delivered the opinion of the court. COLWELL and HOLDRIDGE, JJ., concurring. JUSTICE RAKOWSKI, specially concurring. PRESIDING JUSTICE McCULLOUGH,

specially concurring.

OPINION BY: RARICK

OPINION

[*348] [50]** JUSTICE RARICK delivered the opinion of the court:

Linda Budd (claimant) sought benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 1992)) for injuries sustained to her left ankle on October 8, 1992, while in the employ of Illinois Consolidated Telephone Company (employer). The arbitrator concluded that claimant sustained an accident arising out of her employment and awarded her temporary total disability of 2 and 3/7 weeks, medical expenses, and 15% permanent partial disability to the left foot. On appeal, the Industrial Commission (Commission) adopted and affirmed the decision of the arbitrator, with a special concurrence, and the circuit court of Montgomery County confirmed the decision of the Commission. Employer appeals **[***2]** contending the Commission incorrectly determined that claimant's injury arose out of her employment.

On October 8, 1992, claimant was a 38-year-old office worker who had worked for employer some 23 years. On this date, claimant fell descending steps between the first and second floors of the office building and fractured her left ankle. Claimant had left her work area on the first floor and gone upstairs to the second floor to use the women's restroom. There was no women's restroom on the first floor, and the stairs were the sole means of going and coming from the restroom. On her way back down the stairs, she fell on the landing of the stairway located midway from the top to the bottom. Claimant testified she did not know if she slipped on the last step before the landing or on the landing itself. The only thing she did **[**51]** know was that she ended up sitting on the landing. She further testified there was nothing out of the ordinary about the size or angle of the stairs. There were handrails along the stairs but not on the landing between the flights. The steps had rubber treads, although some may have been worn, and the landing consisted of waxed tile flooring. She did not see any liquid **[***3]** or anything else on the floor of the stairway before she fell, and she was not able to see anything after the fall because her glasses fell off. Claimant was wearing shoes with heels of 1 to 1 1/2 inches at the time of the accident. She noticed nothing about her shoes that caused or contributed to the fall and has since worn the same shoes with no problems. After the fall, claimant regained her glasses and slid down the steps from the landing to the first floor and called for help. She was then taken to the hospital.

Employer first asserts on appeal that the issue of whether **[*349]** claimant's injury arose out of her employment is a question of law. According to employer, the facts are undisputed and are susceptible to but a single reasonable inference and, consequently, the issue presented becomes a question of law. See *William G. Ceas & Co. v. Industrial Comm'n,* 261 Ill. App. 3d 630, 634, 633 N.E.2d 994, 997, 199 Ill. Dec. 198 (1994). Claimant agrees with this proposition but points out that the facts here are susceptible to more than one inference. HN1 If more than one inference may be drawn from the undisputed facts on any issue, such an issue presents a question of fact, and the conclusion **[***4]** of the Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence. See *Eagle Discount Supermarket v. Industrial Comm'n,* 82 Ill. 2d 331, 337, 412 N.E.2d 492, 495, 45 Ill. Dec. 141 (1980); *Union Starch Division of Miles Laboratories, Inc. v. Industrial Comm'n,* 56 Ill. 2d 272, 275, 307 N.E.2d 118, 120 (1974) *(Union Starch); William G. Ceas & Co.,* 261 Ill. App. 3d at 635, 633 N.E.2d at 997. We agree with claimant and accordingly apply the manifest weight of the evidence standard. And in order for the decision to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. See *Stapleton v. Industrial Comm'n,* 282 Ill. App. 3d 12, 16, 668 N.E.2d 15, 19, 217 Ill. Dec. 830 (1996). We cannot say an opposite conclusion is clearly apparent in this instance.

HN2 In order for accidental injuries to be compensable under the Act, a claimant must show such injuries arose out of and in the course of his or her employment. See *Eagle Discount*

Supermarket, 82 Ill. 2d at 337-38, 412 N.E.2d at 496; *Nabisco Brands, Inc. v. Industrial Comm'n,* 266 Ill. App. 3d 1103, 1106, 641 N.E.2d 578, 581, 204 Ill. Dec. 354 (1994). **[***5]** "Arising out of" refers to the requisite causal connection between the employment and the injury. In other words, the injury must have had its origins in some risk incidental to the employment. See *Eagle Discount Supermarket,* 82 Ill. 2d at 338, 412 N.E.2d at 496; *William G. Ceas & Co.,* 261 Ill. App. 3d at 636, 633 N.E.2d at 998. "In the course of" refers to the time, place, and circumstances under which the accident occurred. See *William G. Ceas & Co.,* 261 Ill. App. 3d at 636, 633 N.E.2d at 998. The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission, and the Commission's determination thereof will not be set aside unless the decision is contrary to the manifest weight of the evidence. See *Stapleton,* 282 Ill. App. 3d at 15, 668 N.E.2d at 19; *Elliot v. Industrial Comm'n,* 153 Ill. App. 3d 238, 242, 505 N.E.2d 1062, 1065, 106 Ill. Dec. 271 (1987). In this instance the arbitrator concluded that claimant sustained an unexplained fall, and the arbitrator awarded benefits because unexplained falls are compensable in Illinois. See *Stapleton,* 282 Ill. App. 3d at 16, 668 N.E.2d at 19; **[***6]** *William G. Ceas &* **[**52]** **[*350]** *Co.,* 261 Ill. App. 3d at 634, 633 N.E.2d at 997; *Elliot,* 153 Ill. App. 3d at 242, 505 N.E.2d at 1065. The Commission adopted the decision of the arbitrator. We believe this matter more closely comes within the purview of the personal-comfort doctrine. HN3 A reviewing court can affirm the Commission's decision if there is any legal basis in the record to support its decision, regardless of the Commission's findings or reasoning. See *General Motors Corp. v. Industrial Comm'n,* 179 Ill. App. 3d 683, 695, 534 N.E.2d 992, 1000, 128 Ill. Dec. 547 (1989).

HN4 According to the personal-comfort doctrine, an employee, while engaged in the work of his or her employer, may do those things that are necessary to his or her health and comfort, even though personal to himself or herself, and such acts will be considered incidental to the employment. See *Hunter Packing Co. v. Industrial Comm'n,* 1 Ill. 2d 99, 104, 115 N.E.2d 236, 239 (1953); see also *Union Starch,* 56 Ill. 2d at 277, 307 N.E.2d at 121. Using the restroom to meet the demands of personal health or comfort certainly falls within those acts considered incidental to **[***7]** the employment and therefore is considered to be in the course of the employment. See *Hunter Packing Co.,* Ill. 2d at 104, 115 N.E.2d at 239. Incidental acts are not within the course of employment only if done in an unusual, unreasonable or unexpected manner. *Eagle Discount Supermarket,* 82 Ill. 2d at 340, 412 N.E.2d at 497; *Union Starch,* 56 Ill. 2d at 277, 307 N.E.2d at 121. In this instance, there was nothing unusual or unreasonable in claimant's walking up to the second floor to use the restroom or in her descent back to her work area. In fact, using the stairs was the only means of access to the women's restroom. Consequently, the fact that claimant was not performing her actual job duties at the time of the accident does not foreclose her right to compensation. See *Eagle Discount Supermarket,* 82 Ill. 2d at 340, 412 N.E.2d at 497; *Hunter Packing Co.,* Ill. 2d at 104, 115 N.E.2d at 239. She was on employer's premises at a time when she was engaged in her employment in a place where she had a reasonable right to be. More importantly, we believe that claimant was exposed to a greater risk than the general **[***8]** public because she was continually forced to use stairs to seek personal comfort during her workday. Additionally, it would not have been unreasonable for the Commission to have inferred that the accident was attributable to worn stair treads, the lack of a handrail on the landing, or slipperiness of the landing itself. See *Chicago Tribune Co. v. Industrial Comm'n,* 136 Ill. App. 3d 260, 483 N.E.2d 327, 91 Ill. Dec. 45 (1985). Under such circumstances, we cannot say the Commission erred in awarding claimant benefits.

[*351] For the aforementioned reasons, we affirm the decision of the circuit court confirming the decision of the Commission.

COLWELL and HOLDRIDGE, JJ., concurring.

CONCUR BY: RAKOWSKI; McCULLOUGH

CONCUR

JUSTICE RAKOWSKI, specially concurring:

I concur with my colleagues that the Commission's decision that claimant's injury arose out of her employment is not against the manifest weight of the evidence. Because claimant was wearing high heels, some of the stair treads were worn, hand rails were not provided where claimant fell, and the stairs were slippery, the Commission could properly conclude that claimant was exposed to a risk of injury greater than that to which the general public **[***9]** is exposed.

I write separately in an attempt to clarify the case law regarding falls in the work place and to disagree with certain language in the majority opinion relating to the personal comfort doctrine and the concept of unexplained falls.

A. Personal Comfort Doctrine

Unlike the majority, I believe the personal comfort doctrine has no application **[**53]** to this case. For accidental injuries to be compensable, a claimant must show that such injuries arose out of and in the course of her employment. *Orsini v. Industrial Comm'n,* 117 Ill. 2d 38, 44, 109 Ill. Dec. 166, 509 N.E.2d 1005 (1987). The personal comfort doctrine relates only to the "in the course of employment" element and not the "arising out of employment" element. See *Segler v. Industrial Comm'n,* 81 Ill. 2d 125, 128, 40 Ill. Dec. 536, 406 N.E.2d 542 (1980); *Chicago Extruded Metals v. Industrial Comm'n,* 77 Ill. 2d 81, 84, 32 Ill. Dec. 339, 395 N.E.2d 569 (1979); *Union Starch, Division of Miles Laboratories, Inc. v. Industrial Comm'n,* 56 Ill. 2d 272, 277, 307 N.E.2d 118 (1974); *Scheffler Greenhouses, Inc. v. Industrial Comm'n,* 66 Ill. 2d 361, 368, 5 Ill. Dec. 854, 362 N.E.2d 325 (1977); *Dodson v. Industrial Comm'n,* 308 Ill. App. 3d 572, 575, 241 Ill. Dec. 820, 720 N.E.2d 275 (1999); *Karastamatis v. Industrial Comm'n,* 306 Ill. App. 3d 206, 211-12, 238 Ill. Dec. 915, 713 N.E.2d 161 (1999); **[***10]** *All Steel, Inc. v. Industrial Comm'n,* 221 Ill. App. 3d 501, 503-04, 164 Ill. Dec. 32, 582 N.E.2d 240 (1991); see also 2 A. Larson & L. Larson, Larson's Workers' Compensation Law, ch. 21, at 21-1 (1999) (stating employees who minister to personal comforts do not leave the course of their employment).

In the instant case, the parties have never disputed that claimant's injury occurred in the course of her employment. To the contrary, the parties stipulated in the request for hearing form and before the arbitrator that the only issue in the case was whether her injury arose out of her employment. Moreover, appellant's brief frames the sole issue **[*352]** on appeal as "whether the decision of the Industrial Commission finding that the employee sustained an injury arising out of her employment was erroneous as a matter of law." Thus, it is overwhelmingly clear that our only focus should be on whether claimant's injury arose out of employment, specifically, whether the claimant's act of traversing stairs exposed her to a risk of injury greater than that to which the general public is exposed. Because the personal comfort doctrine is an "in the course of" concept and the sole issue in this case is whether claimant's **[***11]** injury arose out of her employment, the doctrine has no application.

B. Idiopathic Falls and Unexplained Falls

The arbitrator in this case held that claimant's injuries arose out of employment solely because the fall was unexplained. The Commission adopted the arbitrator's decision. In a well-reasoned special concurrence Commissioner Gilgis conceded that, although *dictum* from some recent cases has implied that all unexplained falls arise out of employment, the statement is not accurate and is contrary to a well-established body of workers' compensation law. For the reasons that follow, I respectfully submit that Commissioner Gilgis is correct.

As a general rule, risks that an employee may be exposed to are categorized into three groups: (I) risks distinctly associated with employment, (2) risks personal to the employee, and (3) neutral risks that have no particular employment or personal characteristics. Employment risks include the obvious kinds of industrial injuries and occupational diseases. Employment risks are those that are inherent in one's employment. These are risks to which the general public is not exposed. In the context of falls, employment risks include tripping **[***12]** on a defect at employer's premises or falling on uneven or slippery ground at the work site. Because the general

public is not exposed to employment risks, such risks universally arise out of employment. 1 A. Larson & L. Larson, Larson's Workers' Compensation Law § 4.01, at 4-2 (1999).

Personal risks include exposure to elements that cause nonoccupational diseases, personal defects or weakness, and confrontations with personal enemies. Examples of personal risks include falls due to a bad knee or an episode of dizziness. Because such a fall is due to a personal defect or **[**54]** weakness, such falls, commonly known as idiopathic falls, usually do not arise out of employment. 1 A. Larson & L. Larson, Larson's Workers' Compensation Law § 4.02, at 4-2, ch. 9 (1999).

However, an exception to the rule does exist. Injuries caused by an idiopathic fall arise out of one's employment where work place conditions significantly contribute to the injury by increasing the risk of **[*353]** falling or the effects of a fall. See generally *Stapleton v. Industrial Comm'n,* 282 Ill. App. 3d 12, 16, 217 Ill. Dec. 830, 668 N.E.2d 15 (1996); *Nabisco Brands, Inc. v. Industrial Comm'n,* 266 Ill. App. 3d 1103, 1106, 204 Ill. Dec. 354, 641 N.E.2d 578 (1994); **[***13]** *Elliot v. Industrial Comm'n,* 153 Ill. App. 3d 238, 244, 106 Ill. Dec. 271, 505 N.E.2d 1062 (1987); *Oldham v. Industrial Comm'n,* 139 Ill. App. 3d 594, 596, 93 Ill. Dec. 868, 487 N.E.2d 693 (1985). The added risk may be due to some physical circumstance of the immediate vicinity or due to tools, implements, or apparatus the employee is required to use in his duties. 1 T. Angerstein, Illinois Workmen's Compensation § 298, at 221 (1952); see *Wilkes v. Dowell & Co.,* 21 T. L. R. 487 (1902) (fall into ship's hold due to epileptic fit arose out of employment because duties required claimant to stand next to opening); *Sears, Roebuck & Co. v. Industrial Comm'n,* 78 Ill. 2d 231, 35 Ill. Dec. 528, 399 N.E.2d 594 (1979) (fall from forklift); *Rockford Hotel Co. v. Industrial Comm'n,* 300 Ill. 87, 132 N.E. 759 (1921) (fall into ash pit caused by epileptic fit); *Peoria Ry. Terminal Co. v. Industrial Board,* 279 Ill. 352, 116 N.E. 651 (1917) (fall from fire truck); see also *Williams v. Industrial Comm'n,* 38 Ill. 2d 593, 595-96, 232 N.E.2d 744 (1967) (injury arose out of employment where employment conditions increased risk of falling or the risk of injury due to falling from heights or onto a dangerous object). Thus, although the **[***14]** falls in the above cases were idiopathic in nature, the injuries nevertheless arose out of employment because work conditions exposed the employees to an added or increased risk of injury.

Neutral risks have no particular employment or personal characteristics and include stray bullets, dog bites, assaults, street risks, lightning, and hurricanes. In the context of falls, neutral risks include falls on level ground or while traversing stairs. Whether a neutral-risk injury arises out of employment depends on whether the employee was exposed to a risk greater than that to which the general public is exposed. 1 A. Larson & L. Larson, Larson's Workers' Compensation Law § 4.03, at 4-2 to 4-3, § 7.04(1)(a), at 7-15 (1999). Thus, because the general public and employees alike are equally exposed to the risks of walking and traversing stairs, injuries resulting from these acts generally do not arise out of employment. However, as with personal risks, there is an exception where employment conditions create a risk to which the general public is not exposed. In such cases, the injury arises out of employment. The increased risk may be qualitative, such as the dangerous nature of the stairs **[***15]** in the instant case, or quantitative, such as where the employee is exposed to a common risk more frequently than the general public. See *City of Chicago v. Industrial Comm'n,* 389 Ill. 592, 60 N.E.2d 212 (1945) (injury sustained by city inspector when he stubbed his toe on sidewalk curb arose out of employment because employee was required to spend much of his work day traversing city sidewalks). Falls arising from a "neutral" **[*354]** origin or risk have been characterized as "unexplained falls." *Elliot,* 153 Ill. App. 3d at 242; *Oldham,* 139 Ill. App. 3d at 596.

Unexplained falls have often been contrasted with idiopathic falls. See *Chicago Tribune Co. v. Industrial Comm'n,* 136 Ill. App. 3d 260, 263, 91 Ill. Dec. 45, 483 N.E.2d 327 (1985). According to Professor Larson:

> "Unexplained-fall cases begin with a completely neutral origin of the mishap, while idiopathic fall cases begin with an origin which is admittedly personal and **[**55]** which therefore requires some affirmative employment contribution to offset the prima facie showing of personal origin." 1 A. Larson & L. Larson. Larson's Workers' Compensation Law § 9.01(1), at 9-3 (1999).

The above principle **[***16]** that the risk an employee is exposed to determines whether a fall arose out of employment was skewed in *Chicago Tribune* and inadvertently displaced by the oversimplified contentions that idiopathic falls do not arise out of employment because they arise from personal risks and that unexplained falls arise out of employment because they result from employment-related risks. In *Chicago Tribune,* claimant slipped and fell at the bottom of a ramp in the lobby of the building where she worked. The Commission held that the injury arose out of and in the course of employment and awarded benefits. On appeal, we rejected employer's contention that the fall was idiopathic in nature and held that the injury arose out of employment. We noted that claimant was on a ramp, wearing narrow high heel shoes, and testimony established that, when it is wet and snowy outside, people track snow and water onto the floor. In affirming the Commission's finding of compensability, we stated that unexplained falls are compensable, citing *Sears* in support. *Chicago Tribune,* 136 Ill. App. 3d at 264. I submit that this statement was somewhat inaccurate and not totally supported by our supreme **[***17]** court's opinion in *Sears.*

In *Sears,* claimant's decedent, a forklift operator, was found next to the lift. He had died from a skull fracture. The Commission awarded benefits, finding the death arose out of employment. On appeal, the employer argued that because decedent had "looked sick" prior to the fall and had a cold for approximately two weeks, the Commission should have inferred claimant's fall was due to a personal risk and did not arise out of employment. Our supreme court rejected the employer's contention and affirmed. "The testimony of the petitioner that the deceased had been suffering with a cold was a circumstance presumably considered by the Industrial Commission in reaching its decision." *Sears,* 78 Ill. 2d at 234. Although the circumstances of claimant's fall were unexplained, the court did not mention that term or say that unexplained falls are compensable. The court simply affirmed on a manifest weight of the evidence basis.

[*355] The *Sears* case is in complete accord with supreme court precedent. *Rysdon Products Co. v. Industrial Comm'n,* 34 Ill. 2d 326, 215 N.E.2d 261 (1966) (unexplained fall arose out of employment because risk existed due **[***18]** to gas fumes in unventilated room or due to uneven floor); *Siete v. Industrial Comm'n,* 24 Ill. 2d 368, 181 N.E.2d 156 (1962) (unexplained fall but court stated claimant was at risk because he worked at heavy machine with blades); *Ervin v. Industrial Comm'n,* 364 Ill. 56, 4 N.E.2d 22 (1936) (unexplained fall arose out of employment because claimant was required to maintain fire and was at risk of injury therefrom); *Vulcan Detinning Co. Industrial Comm'n,* 295 Ill. 141, 128 N.E. 917 (1920) (unexplained fall arose out of employment because it could have resulted from the nature of the construction of toilet). Thus, even adopting employer's contention in *Sears* that decedent's fall resulted from dizziness due to a sick condition, decedent was nevertheless exposed to a risk of injury greater than that to which the general public is exposed because he was working several feet above the floor and thus was at a greater risk of injury if he fell. Although in each of these cases the exact cause of the fall was unexplained, the Commission or the court found evidence of increased risk.

Unfortunately, several recent cases have repeated the statement in *Chicago Tribune* that unexplained **[***19]** falls arise out of employment. By way of *dictum,* these cases imply that *all* such falls arise out of employment. *Stapleton,* 282 Ill. App. 3d at 16 ("If the **[**56]** fall is unexplained, resultant injuries are compensable[;] if the fall is idiopathic, resultant injuries are not compensable ***"); *Nabisco Brands,* 266 Ill. App. 3d at 1106 (idiopathic falls are "purely personal" to employee and are not compensable; unexplained falls are neutral and are compensable); *William G. Ceas & Co. v. Industrial Comm'n,* 261 Ill. App. 3d 630, 634, 199 Ill. Dec. 198, 633 N.E.2d 994 (1994) (noting that Illinois denies compensation for idiopathic falls but awards compensation for unexplained falls); *General Motors Corp. v. Industrial Comm'n,* 179 Ill. App. 3d 683, 695, 128 Ill. Dec. 547, 534 N.E.2d 992 (1989) (noting that idiopathic falls are not compensable in Illinois while unexplained falls are); *Elliot,* 153 Ill. App. 3d at 242 ("Illinois denies compensation for idiopathic falls" and "Illinois awards compensation for unexplained falls"). For the reasons that follow, these statements are inaccurate and contrary to established case law and principles underlying the Workers' Compensation **[***20]** Act.

Initially, although these cases say idiopathic falls are not compensable and unexplained falls are compensable, it is inaccurate to say that an injury caused by a particular risk is or may be

compensable. Compensability results when an injury arises out of and in the course of employment. Although increased risk may establish *arising out of* that is only one element required for compensability. Claimant must **[*356]** also establish *in the course of employment* and proximate cause between the accident and the injury. It is not possible to determine the entire concept of compensability from risk alone.

Also, it is clear from the above discussion that idiopathic falls arise out of employment where conditions of the work place increase either the risk of falling or the danger of injury. Although idiopathic falls do not arise out of employment where claimant fails to show an increased risk, it is clearly wrong to say such falls never arise out of employment.

Further, because unexplained falls result from a neutral risk, resultant injuries arise out of employment only where claimant can show that he or she is exposed to a risk greater than that to which the general public is exposed. **[***21]** If claimant cannot make such a showing, the injury does not arise out of employment.

To be sure, we have made the misleading statement that unexplained falls are compensable. However, in every such case, we pointed to evidence in the record from which the Commission could have inferred that claimant was exposed to a greater risk of injury than that to which the general public is exposed. See *Nabisco Brands,* 266 Ill. App. 3d 1103, 204 Ill. Dec. 354, 641 N.E.2d 578 (claimant required to carry three 39-inch knives that weighed 50 pounds on stairway); *William G. Ceas,* 261 Ill. App. 3d 630, 199 Ill. Dec. 198, 633 N.E.2d 994 (boss's last-minute preparations caused claimant stress and caused her to hurry down stairs upon which she fell); *Chicago Tribune,* 136 Ill. App. 3d 260, 91 Ill. Dec. 45, 483 N.E.2d 327 (fall could have been due to accumulation of water or ice on floor); *General Motors Corp.,* 179 Ill. App. 3d 683, 128 Ill. Dec. 547, 534 N.E.2d 992 (fall from forklift could have been due to pothole or claimant's attempt to avoid potholes). I cannot find any case where this panel or our supreme court has held that an injury arises out of employment *solely* because the fall was unexplained. To do so would necessitate adopting the positional risk doctrine: **[***22]**

> "If an employee falls while walking down the sidewalk or across a level factory floor for no discoverable reasons, the injury resembles that from stray bullets and other positional risks in this respect. The particular injury would not have happened if the employee had not been engaged upon an employment errand at the time. *In a pure unexplained-fall case, there is no way in which an award can be justified as matter of causation* **[**57]** *theory except by a recognition that this but-for reasoning satisfies the arising' requirement."* (Emphasis added.) 1 A. Larson & L. Larson, Larson's Workers' Compensation Law § 7.04(1), at 7-15 (1999).

Our supreme court, however, has consistently rejected the positional risk doctrine. See *Brady v. Louis Ruffolo & Sons Construction Co.,* 143 Ill. 2d 542, 161 Ill. Dec. 275, 578 N.E.2d 921 (1991).

[*357] At the risk of much repetition, I hope to make one point clear. Whether an injury arises out of employment is *solely* a function of risk, specifically, whether the employee was exposed to a risk of injury greater than that to which the general public is exposed. The terms "explained," "unexplained," and "idiopathic," while useful to describe the nature of a fall, cannot **[***23]** accurately determine whether an injury arises out of employment. As previously discussed, some idiopathic falls arise out of employment; others do not. The same is true with explained and unexplained falls. Although employment risks always arise out of employment, whether personal risks (idiopathic falls) or neutral risks (explained or unexplained falls) arise out of employment is determined by whether the employee was exposed to a risk greater than that to which the general public is exposed. To put this another way, where conditions of employment expose the employee to a risk of injury greater than that to which the general public is exposed, the risk becomes one of employment and resulting injuries arise out of employment.

PRESIDING JUSTICE McCULLOUGH, specially concurring:

I join in the special concurrence of Justice Rakowski. With respect to his discussion of Illinois case law concerning "unexplained falls," I suggest the words "unexplained falls" be stricken from the workers' compensation vocabulary.