

Illinois Official Reports

Appellate Court

Town of Cicero v. Illinois Workers' Compensation Comm'n,
2024 IL App (1st) 230609WC

Appellate Court
Caption

THE TOWN OF CICERO, Appellant, v. THE ILLINOIS
WORKERS' COMPENSATION COMMISSION *et al.* (Michael
Iniguez, Appellee).

District & No.

First District, Workers' Compensation Commission Division
No. 1-23-0609WC

Filed

April 5, 2024

Decision Under
Review

Appeal from the Circuit Court of Cook County, No. 2021-L-50283;
the Hon. Daniel P. Duffy, Judge, presiding.

Judgment

Affirmed.

Counsel on
Appeal

Robert E. Luedke, of Del Galdo Law Group, LLC, of Berwyn, for
appellant.

David B. Menchetti, of Cullen, Haskins, Nicholson & Menchetti, P.C.,
of Chicago, for appellee.

Panel

JUSTICE HOFFMAN delivered the judgment of the court with opinion.
Presiding Justice Holdridge and Justices Mullen, Cavanagh, and Barberis concurred in the judgment and opinion.

OPINION

¶ 1 The Town of Cicero (Cicero) filed the instant appeal from an order of the circuit court, confirming a decision of the Illinois Workers' Compensation Commission (Commission) finding that its employee, Michael Iniguez (the claimant), was a traveling employee and that the injuries he sustained on July 2, 2018, arose out of and in the course of his employment and awarding the claimant benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)). For the reasons that follow, we affirm the judgment of the circuit court.

¶ 2 The claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for injuries sustained on July 2, 2018, while working for Cicero. The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at the arbitration hearings held on May 20, 2019, and January 21, 2020.

¶ 3 At all times relevant, the claimant was employed by Cicero as a blight inspector. His duties included inspecting buildings for broken windows and the condition of paint, checking the condition of garages, examining the condition of lawns, and inspecting property to determine if rubbish was accumulating. The claimant testified that he was required to report to Cicero's town hall at 7:30 a.m. He gained access to the south entrance to the building using a key card. Upon entering the building, he used the south stairwell to ascend to the second floor where his office is located. Once in his office, the claimant would retrieve his work phone and download his assignments for the day from Cicero's computer. Thereafter, the claimant would descend the south stairwell, exit the building through the south entrance, and go to his Cicero-provided vehicle. Thereafter, he would drive through Cicero to identify blighted properties. Throughout the workday, the claimant was required to return to the Cicero town hall to receive further work assignments. The claimant estimated that, during a workday, he would be required to go up and down the south stairwell three or four times.

¶ 4 The claimant testified that, on July 2, 2018, after arriving at the Cicero town hall to begin his workday, he went to his office where he spent about 20 minutes after which he went to the south stairwell, intending to go down the stairs on his way to access his Cicero-provided vehicle. According to the claimant, as he started to descend the stairs, his right foot slipped off the edge of the second-floor landing and he fell down the stairs, striking the right side of his body, the right side of his head, his right shoulder, neck, back and left shoulder as he tumbled down the stairs. He stated that, at the time that he fell, he was holding his cell phone and a cup of coffee in his left hand and nothing in his right hand. The claimant described the edge of the landing as feeling sludgy and greasy with black streaks and film. The claimant admitted that he did not see any trim pieces sticking up in the area where he slipped, and as far as he could see, the stairs were level and the lights over the stairs were working. He also admitted that, in the accident report which he completed and signed, he did not mention that there was any defective condition of the staircase that caused his fall.

¶ 5 The claimant testified that, after he fell, he was unable to get up. He was found by Sarah Kusper, Cicero's interim human resource director. Kusper testified that she was coming up the stairs when she noticed the claimant lying on the stairs. Kusper stated that she saw no defects on the walking surface of the stairs, the stairs had sufficient lighting, there was no debris or foreign substances or liquid on the stairs, no high spots or depressions, no areas of disrepair, and no trim pieces sticking up. According to Kusper, the stairs where the claimant fell were in good condition. James Woods, Cicero's director of maintenance, testified that the lighting in the south stairwell was normal and there were no cracks, depressions, loose concrete, trim pieces sticking up, or high spots on the stairs. He stated that there were no areas of disrepair in the area where the claimant fell. According to Woods, the stairs had not been remodeled or modified since the date of the claimant's fall. Dr. Daniel Roig, a structural engineer and the holder of a PhD in biomechanics, testified that, on August 16, 2019, he examined the stairwell where the plaintiff fell and found no defects on the date of his inspection. Dr. Roig testified that, within a reasonable degree of engineering certainty, it was impossible for condensation to form on the stairs and water could not have spontaneously appeared on the platform or the surface of the stairs. He also stated that the walking surface of the stairs met code requirements and both Occupational Safety and Health Administration and Building Officials and Code Administrators standards. According to Dr. Roig, the static coefficient of friction on the stairs was within normal limits, and that the stairs were no more slippery than any normal surface.

¶ 6 Kusper testified that she was the first person to discover the claimant after he fell down the stairs. She stated that she called for an ambulance and waited in the stairwell with the claimant until the paramedics arrived. The claimant was transported to the MacNeal Hospital emergency room, where he was diagnosed as suffering from a right shoulder contusion and a fracture of the thoracic spine. The claimant was taken off work for three days.

¶ 7 The claimant sought follow-up treatment with his primary care physician complaining of headaches and pain in his shoulder, right knee, and lumbar spine. The claimant was referred to Dr. Hejna who ordered a magnetic resonance imaging (MRI) of the claimant's right knee and shoulders bilaterally and referred the claimant to Dr. Derani for a neurological consult.

¶ 8 After submitting his off-work slips to Cicero on July 16, 2018, the claimant was referred to Westlake Clinic (Westlake), Cicero's occupational clinic. At Westlake, the claimant complained of pain in his right knee, lumbar spine, back and shoulders, bilaterally. The report of that visit states that the objective findings are consistent with the claimant's accident.

¶ 9 On July 24, 2018, after learning that workers' compensation benefits were being denied, the claimant requested that his primary physician authorize his return to work.

¶ 10 On September 19, 2018, Dr. Derani diagnosed the claimant with post-contusion syndrome and prescribed vestibular therapy. That therapy alleviated the claimant's dizziness but not his headaches.

¶ 11 On August 1, 2018, the claimant was evaluated by Dr. Chudik at Hinsdale Orthopedic Associates. Suspecting a left shoulder scapularis tear, right shoulder rotator cuff tear, and a right knee meniscal tear, Dr. Chudik ordered MRIs of all three areas. The claimant had the prescribed scans that confirmed Dr. Chudik's suspicions. Dr. Chudik recommended that the claimant have bilateral shoulder surgeries to repair the tears. He also recommended physical therapy and an injection for the claimant's right knee meniscal tear.

¶ 12 The claimant completed the recommended physical therapy and right knee injection. However, he testified that he still experiences pain in his shoulders, suffers from three or more headaches a month, and suffers from right knee pain with prolonged standing.

¶ 13 Following arbitration hearings held on May 20, 2019, and January 21, 2020, the arbitrator issued a written decision on February 3, 2020, finding that the claimant failed to meet his burden of proving that he sustained an accident that arose out of and in the course of his employment with Cicero on July 2, 2018, and, as a consequence, denied the claimant benefits pursuant to the Act. The arbitrator specifically found that, at the time of his fall, the claimant was not a traveling employee, and although the claimant's injuries were incurred in the course of his employment, they did not arise out of his employment.

¶ 14 The claimant filed a petition for review of the arbitrator's decision before the Commission. On July 16, 2021, the Commission issued a unanimous decision reversing the decision of the arbitrator and finding that the claimant sustained an accident on July 2, 2018, that arose out of and in the course of his employment with Cicero and that the claimant's current condition of ill-being is causally related to that accident. Specifically, the Commission found that the claimant was a traveling employee and that he did not lose that status merely because his accident occurred on stairs located in Cicero's facility. The Commission also found that the claimant's act of descending the stairs from his second-floor office to the exit leading to the parking lot where his assigned vehicle was located was reasonably foreseeable and incidental to his job duties. The Commission ordered Cicero to pay all reasonable and necessary medical expenses incurred by the claimant for treatment resulting from his July 2, 2018, accident as listed in the claimant's exhibit 8. The Commission also ordered Cicero to pay the claimant 3¹/₇ weeks of temporary total disability (TTD) benefits as provided in section 8(b) of the Act (820 ILCS 305/8(b) (West 2020)) and authorize and pay for bilateral shoulder surgeries as recommended by the claimant's physician along with medications for the treatment of the claimant's headaches. In addition, the Commission ordered Cicero to pay the claimant interest due, if any, under section 19(n) of the Act (*id.* § 19(n)), and granted Cicero credit for all amounts, if any, paid to, or on behalf of, the claimant as a result of his accidental injury. Finally, the Commission remanded the matter back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 15 Cicero sought a judicial review of the Commission's decision in the circuit court of Cook County. On March 27, 2023, the circuit court entered an order confirming the Commission's decision, and this appeal followed.

¶ 16 Cicero argues that the Commission's determination that the claimant suffered an accident because of a defect in its premises is against the manifest weight of the evidence. Although the Commission did state in its decision that, when a claimant's injury was sustained as a result of a condition of the employer's premises, compensation has consistently been awarded, as Cicero admits in its brief, the Commission never found that the claimant was injured as a result of a defect in Cicero's premises. Cicero's argument in this regard is addressed to a nonissue and, therefore, wholly irrelevant to our analysis.

¶ 17 Relying on the supreme court's analysis in *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, Cicero also argues that the injuries sustained by the claimant when he fell down the stairs did not arise out of his employment. Generally, traversing stairs is a neutral risk and injuries resulting therefrom are not compensable under the Act. *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 20.

According to Cicero, the injuries sustained by the claimant when he fell down the stairs did not arise out of his employment because he was not exposed to a risk to a greater degree than the general public. See *McAllister*, 2020 IL 124848, ¶ 44. Cicero’s entire argument in this regard is premised upon its assertion that the claimant was not a traveling employee when he fell.

¶ 18 Cicero further argues that the Commission’s finding that the claimant was a traveling employee at the time of his accident is erroneous as a matter of law. This argument impacts on the question of whether the claimant’s accident arose out of and in the course of his employment.

¶ 19 To obtain compensation under the Act, the claimant must establish by a preponderance of the evidence that he suffered a disabling injury that arose out of and in the course of his employment. 820 ILCS 305/2 (West 2016); *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 203 (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 (1989).

¶ 20 “[I]n the course of employment” refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm’n*, 66 Ill. 2d 361, 366-67 (1977). Injuries sustained on an employer’s premises, or at a place where the claimant might reasonably have been while performing his duties, and while a claimant is at work, or within a reasonable time before and after work, are generally deemed to have been received in the course of the employment. *Caterpillar Tractor Co. v. Industrial Comm’n*, 129 Ill. 2d 52, 57 (1989); *Wise v. Industrial Comm’n*, 54 Ill. 2d 138, 142 (1973). It is undisputed that the claimant in this case was injured while at work and on Cicero’s premises. Clearly, he was injured in the course of his employment. The question remains whether the claimant’s injuries arose out of his employment.

¶ 21 An injury arises out of employment when “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. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in order to fulfill his job duties. *McAllister*, 2020 IL 124848, ¶ 36.

¶ 22 A traveling employee is one who is required to travel away from his employer’s premises in order to perform his job. *The Venture—Newberg-Perini, Stone & Webster v. Illinois Workers’ Compensation Comm’n*, 2013 IL 115728, ¶ 17. For a traveling employee, travel is an essential element of their job duties. See *Urban v. Industrial Comm’n*, 34 Ill. 2d 159, 163 (1966). The uncontradicted evidence in the record established that travel away from Cicero’s town hall was an essential element of the claimant’s duties as a blight inspector. We conclude, therefore, that the Commission correctly determined that the claimant was a traveling employee. Cicero argues, however, that the Commission’s finding that the claimant had the status of a traveling employee when he was injured on its premises before he entered his assigned vehicle and commenced his workday is erroneous as a matter of law.

¶ 23 Relying on this court’s decision in *Pryor v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (2d) 130874WC, Cicero reasons that, when the claimant left his home, he was a commuter traveling to his normal place of business in the Cicero town hall to retrieve his assignments as a necessary precondition to any subsequent work-related travel and that it was not until he would have left the town hall to commence traveling through the town to inspect

buildings that he would have become a traveling employee. However, we find Cicero's reliance upon this court's decision in *Pryor* to be misplaced.

¶ 24 The facts in *Pryor* are clearly distinguishable from the facts of the instant case. In *Pryor*, the claimant was employed as a car hauler. His duties included loading vehicles onto a car-hauling truck at the employer's terminal facility, driving the truck to various dealerships, and unloading the cars at those dealerships. *Id.* ¶ 5. He was injured as he bent down to pick up a suitcase and place it in his personal car before he was to drive from his home to his employer's terminal facility to commence his workday. *Id.* ¶ 7. Finding that the claimant had not embarked on a work-related trip at the time of his injury but was injured in preparation for a regular commute from his home to his employer's premises, we affirmed the Commission's determination that the claimant's injury did not arise out of or in the course of his employment. *Id.* ¶ 29. Unlike the claimant in *Pryor*, the claimant in the instant case was not injured either during, or in preparation for, a regular commute from his home to Cicero's town hall to begin his workday. He was injured when he fell downstairs after he arrived at work, had retrieved his assignments from Cicero's computer, and was on his way to his Cicero-provided vehicle.

¶ 25 Further, we reject Cicero's assertion that the claimant was injured on its premises before he commenced his workday as a traveling employee. The claimant testified that he was required to report to Cicero's town hall at 7:30 a.m., go to his second-floor office to retrieve his work phone and download his assignments for the day from Cicero's computer, and then go to Cicero's parking lot, where his assigned vehicle was located. Cicero did not present any evidence rebutting the claimant's testimony. The claimant fell down the stairs after retrieving his work phone and downloading his assignments for the day and was injured after his workday as a blight inspector had begun.

¶ 26 The determination of whether an injury to a traveling employee arose out of and in the course of his employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985). An injury to a traveling employee arises out of his employment if he was injured while engaging in conduct that was reasonable and foreseeable by his employer. *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92 (1983). Whether a traveling employee was injured while engaging in conduct that was reasonable and foreseeable to his employer is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. See *Bailey v. Industrial Comm'n*, 247 Ill. App. 3d 204, 209 (1993). The Commission found that the claimant's conduct in descending the stairs after retrieving his work phone and downloading his assignments for the day and while he was on his way to his assigned vehicle to perform his off-site blight inspections was reasonable, foreseeable, and incidental to his job as a blight inspector. We have no basis upon which to conclude that the Commission's findings in this regard are against the manifest weight of the evidence. It follows, therefore, that the Commission's conclusion that the claimant's injuries arose out of his employment is not against the manifest weight of the evidence.

¶ 27 In summary, we conclude that the Commission's findings that the claimant was a traveling employee and that his injuries sustained when he fell downstairs on Cicero's premises arose out of and in the course of his employment were neither contrary to the law nor against the manifest weight of the evidence.

¶ 28 For the reasons stated, the judgment of the circuit court, which confirmed the Commission's decision, is affirmed.

¶ 29 Affirmed.