Illinois Official Reports

Appellate Court

***Western Springs Police Department v. Illinois Workers' Compensation Comm'n*, 2023 IL App (1st) 211574WC**

Appellate Court Caption	WESTERN SPRINGS POLICE DEPARTMENT, Appellee, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Jacqueline MacDonnell-Dayhoff, Appellant).
District & No.	First District, Workers' Compensation Commission Division No. 1-21-1574WC
Filed	January 13, 2023
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 20-L-050384; the Hon. Daniel P. Duffy, Judge, presiding.
Judgment	Circuit court reversed; Commission decision reinstated.
Counsel on Appeal	Michael A. Rom, of Cullen, Haskins, Nicholson & Menchetti, P.C., of Chicago for appellant. Patrick J. Jesse and Katrina L. Robinson, of Rusin & Maciorowski, Ltd., of Chicago, for appellee.
Panel	JUSTICE HOFFMAN delivered the judgment of the court, with opinion. Presiding Justice Holdridge and Justices Hudson, Cavanagh, and Barberis concurred in the judgment and opinion.

OPINION

¶ 1 The claimant, Jacqueline MacDonnell-Dayhoff, appeals from an order of the circuit court of Cook County that reversed a decision of the Illinois Workers' Compensation Commission (Commission) awarding her benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)) for injuries to her wrist and arm sustained while employed as a crossing guard for the Village of Western Springs Police Department. For the reasons that follow, we reverse the judgment of the circuit court and reinstate the decision of the Commission.

¶ 2 The following recitation of the facts relevant to a disposition of this appeal is taken from the evidence adduced at an April 26, 2019, arbitration hearing conducted pursuant to the Act on the claimant's application for adjustment of claim. The facts giving rise to the instant case are essentially uncontested.

¶ 3 The claimant was employed by the Village of Western Springs (Village) as a crossing guard and as a receptionist doing general office work. On February 6, 2014, the claimant's crossing guard duties required her to be at the corner of Wolf Road and Hillgrove Avenue in the Village from 7:40 a.m. until 8:10 a.m. The claimant described the location as being "right outside" the door of the village hall. According to the claimant, she drove to work that morning and, at approximately 7:30 a.m., parked her vehicle in an angled parking space directly across Hillgrove Avenue from the village hall. She stated that she frequently parked in one of the angled parking spaces across from the village hall because those parking spaces were close to the corner where she worked as a crossing guard. She testified that, as she stepped out of her vehicle on February 6, 2014, she slipped on ice that was hidden by a thin layer of snow, lost her balance, fell, and injured her wrist. The claimant was taken by ambulance to LaGrange Memorial Hospital, where it was determined that she had fractured her wrist.

¶ 4 The claimant admitted that there are two employee-designated parking lots behind the village hall that are not for use by the general public. She stated that, when she arrived for work on February 6, 2014, she did not check to see if parking space was available in either employee lot before parking her vehicle in one of the angled parking spaces across Hillgrove Avenue from the village hall. The claimant also admitted that she could park anywhere she wanted and that no one from the Village told her where to park. She testified that she chose to park in one of the angled parking spaces because it was more convenient.

¶ 5 Received in evidence at the arbitration hearing was a series of pictures depicting the parking space in which the claimant had parked and the surrounding area. Those pictures reveal that there are angled parking spaces along the railroad tracks across Hillgrove Avenue from the village hall. Those parking spaces are directly adjacent to Hillgrove Avenue.

¶ 6 The claimant admitted that the angled parking space in which she parked was not reserved for Village employees. The space was for commuter train parking, limited to four hours in duration, and available for use by the general public. The claimant testified that the Village granted her and several other Village employees the privilege of parking in the angled parking spaces in excess of the four-hour parking limitation applicable to members of the general public. She stated that she was required to give the Village her license plate number, so that the police officers would know that it was her car and not issue a citation for parking in excess of the four-hour parking limitation.

¶ 7 Ingrid Velkme, the Western Springs village manager, testified that the angled parking spaces along the railroad tracks, including the parking space where the claimant fell, are in a public parking area, which the Village owns and maintains. She stated that the Village plows the streets and public areas. Velkme's testimony in that regard was corroborated by the testimony of one of the Village's police officers, Tony Jemison.

¶ 8 Following the arbitration hearing, the arbitrator issued a written decision on July 11, 2019, finding that the claimant did not sustain an accident that arose out of and in the course of her employment and denied her benefits under the Act. According to the arbitrator, the claimant parked her vehicle on a public street in a space open to the general public and not designated for parking by Village employees, and she fell at a point well away from her crossing guard post. The arbitrator concluded that the claimant was exposed to a neutral risk, the dangers associated with ice and snow, that was not greater in degree than that to which the general public is exposed.

¶ 9 The claimant filed a petition for review of the arbitrator's decision by the Commission. On August 5, 2020, the Commission issued a decision, with one commissioner dissenting, that reversed the decision of the arbitrator and found that the claimant sustained an accident that arose out of and in the course of her employment with the Village on February 6, 2014. The Commission reasoned that the claimant "fell in a parking space provided by her employer [the Village]." According to the Commission, although the parking space where the claimant fell was open to the general public, the Village allowed her to park there and waived the four-hour parking limit for her and other Village employees. The Commission concluded that

> "the preponderance of the evidence demonstrates that the Village owned the parking premises where the accident occurred, exercised control or dominion over the area, and although there is no evidence that *** [the Village] required *** [the claimant] to park there, they did confer different parking rules so that Village employees could use that parking space."

Based upon that analysis, the Commission concluded that the claimant's injury was caused by a hazardous condition on the Village's premises and was, therefore, compensable under the Act. The Commission awarded the claimant 21 weeks of temporary total disability benefits and 71.75 weeks of permanent partial disability benefits for a 35% loss of use of her right hand and ordered the Village to pay $79,290.21 for necessary and reasonable medical expenses incurred by the claimant, against which the Village was granted a credit under section 8(j) of the Act (820 ILCS 305/8(j) (West 2018)) in an equal amount.

¶ 10 The Village sought a judicial review of the Commission's decision in the circuit court of Cook County. On November 18, 2021, the circuit court entered an order holding that the Commission's decision was erroneous as a matter of law and reversing the Commission's decision. The circuit court agreed with the analysis of the dissenting commissioner, finding that the claimant's accident did not involve a fall in a parking lot provided by the Village for use by its employees and that her accident did not arise out of and in the course of her employment. This appeal followed.

¶ 11 In urging reversal of the circuit court's judgment and reinstatement of the Commission's decision, the claimant argues that the Commission's determination that she suffered an accident that arose out of and in the course of her employment is not against the manifest weight of the evidence. According to the claimant, the unrebutted evidence established that she "fell on ice in the employer provided parking while starting her job as a crossing guard."

She also contends that the unrebutted evidence established that she was injured on premises owned by the Village within a reasonable time before assuming her duties as a crossing guard.

¶ 12 The Village argues that the Commission's determination that the claimant suffered an accident that arose out of and in the course of her employment is both against the manifest weight of the evidence and erroneous as a matter of law. According to the Village, the evidence established that the claimant's "*injury did not occur in a parking lot* provided by *** [it], but rather occurred on a public street." (Emphasis in the original.) As such, it concludes that the circuit court correctly reversed the Commission's decision predicated on the proposition that, when an employee slips and falls at a point off of the employer's premises while traveling to or from work, the resulting injuries do not arise out of and in the course of the employment and are not compensable under the Act.

¶ 13 The issue in this appeal is whether the Commission's finding that the claimant's accident and resulting injury arose out of and in the course of her employment with the Village is against the manifest weight of the evidence.

¶ 14 To obtain compensation under the Act, a claimant must establish, by a preponderance of the evidence, that she suffered a disabling injury that arose out of and in the course of her employment. *Land & Lakes Co. v. Industrial Comm'n,* 359 Ill. App. 3d 582, 591-92 (2005). 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).

¶ 15 Arising out of the employment refers to the origin or cause of the claimant's injury. As the supreme court held in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989):

> "For an injury to 'arise out of' the employment its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. [Citations.] Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties. [Citation.] 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. [Citations.]"

¶ 16 " '[I]n the course of' " 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 (1977). Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing her 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.*, 129 Ill. 2d at 57; *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973).

¶ 17 Whether an employee suffered an accident which arose out of and in the course of her employment 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. *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 68. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of

the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 18 When an employee slips and falls while walking to work at a point off the employer's premises, the resulting injuries do not arise out of and in the course of her employment and are not compensable under the Act. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 483-84. This rule is known as the "general premises rule." See *id.* at 484. However, two exceptions to the general premises rule have developed. First, recovery has been permitted where the employee is injured in a parking lot provided by and under the control of the employer. *Id.* This exception, known as the "parking lot exception" (see *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1038 (2004)), is applicable in circumstances where the employee's injury is caused by some hazardous condition in the parking lot. See *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 217 (1982); *Hiram Walker & Sons, Inc. v. Industrial Comm'n*, 41 Ill. 2d 429, 431 (1968); *De Hoyos v. Industrial Comm'n*, 26 Ill. 2d 110, 114 (1962). Second, recovery has also been permitted when the employee is injured at a place where she was required to be in the performance of her duties and the employee is exposed to a risk common to the general public to a greater degree than other persons. *Illinois Bell Telephone Co.*, 131 Ill. 2d at 484.

¶ 19 Applying the parking lot exception to the general premises rule, the Commission concluded that the claimant's accident and resulting injury arose out of and in the course of her employment with the Village. In reaching that conclusion, the Commission found that the claimant fell in a parking space provided by the Village and that she was on the Village's "premises" at the time of her injury. The dissenting commissioner found that the claimant failed to prove that her accident arose out of and in the course of her employment with the Village, reasoning that, although the Village chose not to enforce the four-hour parking limitation against the claimant or other Village employees who parked in one of the angled parking spaces, the parking space where the claimant fell was not provided by the Village for its employees. According to the dissenting commissioner, the claimant fell on a public street, and as such, the parking lot exception is not applicable in this case. The dissenting commissioner and the circuit court were of the opinion that the Commission's finding that the Village's "premises" in this case included the parking space where the claimant was injured rested on an overly expansive definition of the term "premises" and would mean that a municipal employer's "premises" for purposes of determining the compensability of an injury to one of its employees incurred while traveling to work would include all streets and sidewalks throughout the municipality. The arguments of the Village in support of the circuit court's order reversing the decision of the Commission track the reasoning of the dissenting commissioner.

¶ 20 We do not read the Commission's decision to mean that a municipal employer's "premises" for purposes of determining the compensability of an injury to one of its employees incurred while traveling to work would include all streets and sidewalks throughout the municipality. We reject such an expansive definition of the term "premises" in the context of a workers' compensation claim against a municipality. We believe that a municipal employer's "premises" in the context of a workers' compensation claim includes only a place where the injured employee reasonably might be in the performance of his or her duties and any place incident thereto, including employer provided parking areas. It does not include all property

owned by the municipality, regardless of its connection to the performance of an injured employee's duties. We read the Commission's decision as being based simply on a finding that the parking space where the claimant fell was an employer provided parking area because the Village granted the claimant and other employees the privilege of parking in the spaces in excess of the four-hour limitation applicable to the general public.

¶ 21 As this court held in *Walker Brothers, Inc. v. Illinois Workers' Compensation Comm'n*, 2019 IL App (1st) 181519WC, ¶ 23, "[i]n determining whether the parking lot exception applies, it is clear that we must determine whether the employer 'provided' the parking lot in question to its employees." No doubt, an employer's control or dominion over a parking area is a significant factor in an analysis of whether the parking lot exception is applicable. *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812, 816 (2003). However, an employer's control or dominion is relevant to a parking lot exception analysis only in circumstances where the employer has provided the parking area in question for use by its employees. *De Hoyos*, 26 Ill. 2d at 114.

¶ 22 The evidence in this case established that the claimant was on her way to work as a crossing guard when she parked her vehicle in one of the angled parking spaces directly across Hillgrove Avenue from the village hall and that, upon exiting her vehicle, she slipped on ice which was hidden by a thin layer of snow, fracturing her wrist. It is undisputed that the Village owned and maintained the parking space where the claimant slipped and fell. Although the parking space was available for use by the general public as commuter train parking, the claimant's uncontradicted testimony established that parking by the general public was limited to four hours in duration, whereas the Village granted her and several other Village employees the privilege of parking in excess of the four-hour limitation.

¶ 23 The Commission correctly determined that

> "the preponderance of the evidence demonstrates that the Village owned the parking premises where the accident occurred, exercised control or dominion of the area, and although there is no evidence that [the Village] required [the claimant] to park there, they [*sic*] did confer different parking rules so that Village employees could use that parking space."

The Commission went on to find that the claimant "fell in a parking space provided by her employer[,] [the Village]." Based on the Village having granted the claimant and other Village employees the privilege of parking in the parking space where the claimant slipped and fell in excess of the four-hour parking limitation applicable to members of the general public, we conclude that the Commission's finding that the claimant fell in an employer provided parking space is not against the manifest weight of the evidence. When, as in this case, an employee slips and falls on ice or snow in an employer provided parking area, the resulting injury arises out of and in in the course of her employment. See *Archer Daniels Midland Co.*, 91 Ill. 2d at 217; *Hiram Walker & Sons, Inc.*, 41 Ill. 2d at 431; *De Hoyos*, 26 Ill. 2d at 114; *Mores-Harvey*, 345 Ill. App. 3d at 1038.

¶ 24 Based upon the foregoing analysis, we reverse the judgment of the circuit court that reversed the Commission's decision awarding the claimant benefits pursuant to the Act, and we reinstate the Commission's decision.

¶ 25 Circuit court reversed; Commission decision reinstated.