FILED
April 22, 2021
Carla Bender
4th District Appellate
Court, IL

2021 IL App (4th) 200253WC-U

No. 4-20-0253WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LOIS M. VAUGHAN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Sangamon County.
	)	
v.	)	No. 18-MR-892
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION and MEMORIAL MEDICAL CENTER,	)	
	)	Honorable
	)	Dwayne Gab,
Respondents-Appellees.	)	Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's decision that claimant failed to prove her injuries from a parking lot fall arose out of employment was not against the manifest weight of the evidence.

¶ 2 Claimant, Lois Vaughan, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)) against her employer, Memorial Medical Center (Memorial), seeking benefits for injuries sustained to her right leg when

she fell in a parking lot on October 29, 2015. On appeal, claimant argues that the decision of the Illinois Workers' Compensation Commission (Commission) that claimant failed to prove that her injuries arose out of employment was against the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 I. Background

¶ 4 The following factual recitation was taken from the record and evidence adduced at the arbitration hearing held on January 18, 2017. Prior to the start of the hearing, the parties stipulated that claimant fell in a parking lot on Memorial's premises. The arbitrator also admitted into evidence, at the request of both parties, claimant's medical records and various photographic exhibits depicting the condition of the sidewalk, curb and slanted asphalted surface where claimant stepped, stumbled and fell.

¶ 5 Claimant, who was 60 years old at the time of the accident, testified to the following. On October 29, 2015, claimant was employed by Memorial as a central processing technician. Claimant described that her job duties included assembling and wrapping trays used to sterilize surgical equipment. She was required to load several trays, weighing 10 to 15 pounds, onto carts before pushing the carts into an autoclave. The carts were typically heavy, weighing as much as 300 pounds. Claimant also emptied trash and laundry bags, weighing up to 20 pounds.

¶ 6 On the morning of the accident, claimant had finished working the third shift (10:30 p.m. to 7:00 a.m.) and had clocked out for the day. She exited the medical center through an employee door, as previously instructed by her immediate supervisor, Brenda Sturdy. Upon exiting, claimant, accompanied by a co-worker, began walking on the sidewalk toward her assigned parking lot—Lot #3. Claimant testified that the sidewalk in that area was not commonly used by members of the general public.

¶ 7 Claimant next described the following events leading to her fall:

> "Well, I was walking out[,] and it looked to me like the concrete on the sidewalk met even with the blacktop[,] but it didn't, and it was about an inch and-a-half to two inches, and I stepped down normal like I was just walking[,] and it made me trip[,] and I stumbled. And when I fell[,] I hit the lip of concrete that is about 2, 2 and-a-half feet away from there on my knee. I landed on my knee."

Additionally, at the time of her fall, claimant testified that it was still dark outside, and the temperature was at or near freezing. She also testified that outside lights, located on nearby buildings and landscaping, illuminated the area where she fell. However, at the time of her fall, one of the lights was not working and others were partially obscured by a parked security van, which resulted in a shadow that made that area darker. Claimant also clarified that, when she fell, she hit her right knee on the lip of concrete that was between two and two-and-a-half feet away.

¶ 8 Claimant next identified a photograph (exhibit 5) which showed the sidewalk, curb and slanted blacktop area where claimant fell. Claimant testified that, as she stepped off the curb with her left foot, her foot did not "land like it was supposed to," causing her to trip, stumble and fall. Claimant further testified that the darkness made the sidewalk and the blacktop appear even, or "level."

¶ 9 Additionally, claimant testified that she began screaming for help immediately after falling because she could not move her leg. A Memorial security guard responded and sought help from staff working at the nearby emergency room. Claimant testified that it took approximately 10 minutes for medical personnel to retrieve a wheelchair and transport her to the emergency room. Memorial medical records showed that claimant was admitted to the emergency room at 7:12 a.m., where she was seen by a nurse, an emergency room physician and a radiologist. Claimant informed

all three, the nurse, emergency room physician and radiologist, that she tripped, but, contrary to the physician's note, she did not say that she tripped "on a curb." While still in the emergency room, claimant also told Sturdy that she "tripped, fell and landed on that concrete lip." The medical records reflect that claimant underwent a right knee x-ray that revealed "a comminuted fracture along the inferior aspect of the patella, the superior patellar pole was somewhat high-riding in the inferior portion which was inferiorly displaced, and there was a large adjacent soft tissue swelling." Claimant was referred to Dr. Ashkon Razavi, an orthopedic surgeon, for further treatment.

¶ 10 On November 25, 2015, claimant underwent corrective surgery to her right knee performed by Dr. Razavi. Claimant later returned to work with restrictions on January 5, 2016, and began a physical therapy regimen.

¶ 11 On May 31, 2016, claimant was discharged from Dr. Razavi's care and returned to work full duty as a central processing technician. By November 2016, however, claimant began experiencing difficulty performing her work-related duties, which required prolonged periods of standing, lifting trays and pushing heavy carts. Claimant later discussed these difficulties with Brenda Douglas, Sturdy's immediate supervisor. Following that discussion, claimant accepted an alternate position with Memorial that paid approximately $2.17 less per hour but involved lighter lifting and preparing linen packs.

¶ 12 Claimant further testified regarding the lingering issues resulting from her knee injury. Claimant used a cane while walking to and from her work building, because the path to her particular building requires her to traverse a hill. Claimant testified that her knee occasionally swelled and she had experienced a "buckling feeling." Additionally, her knee was generally stiff and occasionally popped, which temporarily relieved the stiffness. Claimant further testified that

her injury had prevented her from enjoying recreational activities, such as playing with her dogs, hiking, and bike riding. She was also unable to walk on uneven ground without twisting her ankle.

¶ 13 On cross examination, claimant testified to the following. Claimant admitted that she was permitted to park in any of the employee parking lots, but it was suggested that she park in Lot #3. Additionally, claimant admitted she was permitted to use any entry door, but it was suggested that she use the closest door. Claimant acknowledged that two public sidewalks leading to the employee parking lot were available for her to use. Claimant was familiar with the area, sidewalks, buildings and available entry ways because she initially worked as a "traveler" at Memorial from January 2015 through June 2015. Claimant admitted that she was cutting across the walkway at the time of her fall, rather than walking farther down the sidewalk and turning to use the nearby access ramp. Claimant admitted that she had traversed the area many times over a span of several months and had stepped off the same curb before but in different places. Claimant further admitted that the area where she fell was clear of rocks, debris, water, snow, ice, holes or other surface-type defects.

¶ 14 On re-direct examination, claimant identified a photograph that showed "an area of asphalt being level with the sidewalk and then tapering down to the regular curb size." Claimant's counsel then asked claimant the following:

> "Q. The morning that this occurred on October 29, 2015, you stepped off where there was a leveling between the asphalt and the curb to the sidewalk, correct?
> A. Yes.
> Q. And you have identified you thought it was an inch and one half to 2 inch difference, correct?
> A. Yes."

The arbitrator then expressed some confusion and asked claimant the following question:

> "Q. So, you think you fell because you didn't see the difference in height between the concrete sidewalk and the asphalt?
> A. Right. It looked even to me."

Claimant then followed up, commenting that: "It was dark and it looked even."

¶ 15 Rachel Moore, a workers' compensation coordinator for Memorial, testified to the following. Moore started working for Memorial in 2008 and, since that time, her job title had changed multiple times. Having previously worked as a new employee specialist, Moore's main duties were to ensure compliance with agency contracts, including employee contracts. Moore testified that she was familiar with the instructions provided to new employees, and, as a new employee specialist, she would meet personally with all new employees and give each a "new hire packet during their new hire appointment." According to Moore, new employees were not told where to park but were given a map that identified employee parking lots. Memorial employees were provided a red parking sticker that authorized parking in any employee lot.

¶ 16 Moore confirmed that claimant stated in her injury report that "while walking out of work [she] tripped on the curb falling on right knee." Moore also confirmed that the sidewalks and area where claimant fell were open to the general public. Moore had also observed members of the general public using the sidewalks in that area due to the sidewalk's close proximity to Lot #3, a public parking area. Moore also testified that claimant's chosen path was not the quickest route to the parking lot, explaining that walking "straight through" would have been the quickest route. On cross-examination, Moore acknowledged that she was not employed as a workers' compensation coordinator on the date of claimant's fall and that claimant's injury report was likely completed by Sturdy. Moore agreed that the sidewalks in that area belonged to and were maintained by Memorial, not the City of Springfield, Illinois.

¶ 17 Moore identified photographs of the area where claimant's fall occurred and testified that one particular photograph (exhibit 4) depicted a foot on the asphalted area, rather than the curb, with the back of the foot touching the curb. Moore was present with claimant's attorney when

Memorial's attorney took the photograph in exhibit 4, but claimant was not present to verify the accuracy of the placement of the foot. Moore believed that that claimant's attorney, whose foot was depicted in the photograph, thought that was the approximate location.

¶ 18 On February 13, 2017, the arbitrator issued a written decision, finding that claimant sustained an accidental injury on October 29, 2015, arising out of and in the course of her employment. In rendering his decision, the arbitrator relied on *Litchfield Healthcare Center v. Industrial Comm'n*, 349 Ill. App 3d 486 (2004), which the arbitrator believed involved a similar fact pattern. The arbitrator found that claimant had encountered a hazardous or defective condition—uneven surface—while she was walking to an employee parking lot immediately after leaving work. The arbitrator concluded that claimant's risk of tripping presented a neutral risk, which was greater than that encountered by the general public. Accordingly, the arbitrator awarded claimant temporary total disability benefits, medical expenses and permanent partial disability compensation representing 25% loss of use of the right leg.

¶ 19 Memorial subsequently filed a timely petition for review with the Commission. On September 27, 2017, the Commission issued a decision unanimously reversing the arbitrator's decision. The Commission found that the arbitrator's findings of hazard or defect and determination that claimant's injury arose out of her employment were both erroneous, noting that the arbitrator's reliance on *Litchfield*, was misplaced. The Commission observed that, unlike *Litchfield*, 349 Ill. App 3d at 491, which involved a defective sidewalk where adjoining slabs were at different levels, the height differential between the sidewalk and the asphalt where claimant fell was by design, not a defect. The Commission, stressing its agreement with Memorial's argument, stated:

> "[C]ommon sense dictates that sidewalk slabs should be even or at the same height; whereas curbs are, by nature, raised boundaries. Thus, demonstrating height differences between slabs within the same sidewalk evidences defectiveness; where demonstrating height differences between the curb and the area it borders does not (internal quotation marks omitted)."

Again, the Commission determined that, unlike *Litchfield*, the photographs, admitted into evidence by both parties (depicting the parking lot, sidewalk, asphalted area and purported spot of claimant's fall), "show that the premises were neither defective nor hazardous." In particular, the Commission found that "the height differential (diminishing towards the access ramp at the end of the sidewalk) between the curb and the blacktop was by design and not a defect."

¶ 20 The Commission, instead, noted that claimant's case was factually similar to the circumstances in *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989), where the claimant was injured when he stepped off a curb featuring a "'slight slope between the curb and the driveway'" in front of his place of employment. The Commission emphasized that the Illinois Supreme Court clarified in *Caterpillar Tractor Co.*,129 Ill. 2d at 61-2, that the arising out of element was not satisfied by the claimant merely taking an acceptable route to and from employment. Thus, quoting the supreme court in *Caterpillar Tractor Co.*, the Commission found claimant failed to establish that she was exposed to a risk not common to the general public to a greater degree because " '[c]urbs and the risk inherent in traversing them, confront all members of the general public.' " See *Id*. at 62. Accordingly, the Commission denied claimant benefits and found all other issues moot.

¶ 21 Claimant sought judicial review of the Commission's decision in the circuit court of Sangamon County. On May 5, 2020, the court confirmed the Commission's decision. Claimant filed a timely notice of appeal on June 3, 2020.

¶ 22 II. Analysis

¶ 23 The sole issue on appeal is whether the Commission's finding that claimant's right knee injury did not arise out of her employment was against the manifest weight of the evidence. Claimant argues that her fall was caused by a sloped area of blacktop that appeared to be level with the sidewalk, which presented a hazardous condition on Memorial's premises. Memorial argues that the Commission's decision was not against the manifest weight of the evidence. We agree with Memorial.

¶ 24 To be compensable under the Act, the claimant has the burden of establishing, by a preponderance of the evidence, that her injury arose out of and in the course of her employment. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). The Commission is the ultimate decision maker and is not bound by any decision made by the arbitrator. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 63 (2006) (citing *Cushing v. Industrial Comm'n*, 50 Ill. 2d 179, 181-82 (1971)). The Commission must weigh the evidence that was presented at the arbitration hearing and determine where the preponderance of that evidence lies. *Durand*, 224 Ill. 2d at 64. Reviewing courts will not reverse the Commission's decision unless it is contrary to the law or its fact determinations are against the manifest weight of the evidence. *Id.* at 64. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Murff v. Illinois Workers' Compensation Comm'n*, 2017 IL App (1st) 160005, ¶ 22.

¶ 25 An injury "in 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). That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Sisbro Inc*., 207 Ill. 2d at 203 (citing 1 A. Larson, Worker's Compensation Law section 12.01 (2002)). Injuries sustained on an employer's premises, or at a place where 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 employment. *Caterpillar Tractor Co*., 129 Ill. 2d at 57-8.

¶ 26 Here, it is undisputed that claimant's injuries occurred in the course of her employment. The evidence showed that claimant's injuries occurred when she fell while stepping onto a curbed parking lot located on Memorial's premises. Claimant testified, and the record supports, that the accident occurred on her usual route to the employee parking lot immediately following her shift. Thus, we consider only whether claimant's injuries arose out of her employment.

¶ 27 An injury "arises out of" employment if "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. "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he or she was instructed to perform by the employer, acts which he or she had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his or her assigned duties." *Brais v. Illinois Workers' Compensation Comm'n,* 2014 IL App (3d) 120820WC, ¶ 18. "A risk is incidental to employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Id.,* ¶ 18 (citing *Caterpillar Tractor Co.,* 129 Ill. 2d at 58).

¶ 28 There are three categories of risk to which an employee may be exposed; namely: (1) risks distinctly associated with employment; (2) personal risks; 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. 3d 149, 162 (2000). Neutral risks—risks that have no particular employment characteristics—"generally do not arise out of the employment and are compensable under the Act only where the employee was exposed to the risk to a greater degree than the general public." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n,* 407 Ill. App. 3d 1010, 1014 (2011). "Such an increased risk may be either qualitative, such as some aspect of the employment which contributes to the risk, or quantitative, such as when the employee is exposed to a common risk more frequently than the general public." *Metropolitan Water,* 407 Ill. App. 3d at 1014.

¶ 29 When an employee is injured on the usual route to the employer's premises and there is a special risk or hazard on the route, the hazard becomes part of the employment. See *Litchfield,* 349 Ill. App. 3d at 491. "Special hazards or risks encountered as a result of using a usual access route satisfy the 'arising out of' requirement of the Act." *Id.* at 491 (citing *Bommarito v. Industrial Comm'n,* 82 Ill. 2d 191, 195 (1980)).

¶ 30 In challenging the Commission's decision, claimant first claims that the Commission's finding that she "stumbled over the curb" is unsupported by the evidence. According to claimant, the evidence clearly shows that she was "completely off the curb" when she fell. Memorial responds that claimant's claim amounts to a matter of semantics. We agree with Memorial.

¶ 31 Claimant testified that when she stepped down with her left foot, "it didn't land like it was supposed to," causing her to trip, stumble and fall. Exhibit 4, which depicts claimant's stance at the time she stepped down with her left foot, shows claimant standing over a curb, with her left foot on the asphalt and her right foot on the sidewalk. Again, claimant testified that it was at that moment, as depicted in exhibit 4, that her left foot gave out, and she "*stumbled* and [she] tripped

and fell." (Emphasis added.). Thus, the Commission's finding that claimant "stumbled over a curb" is entirely consistent with the evidence adduced at the arbitration hearing. Accordingly, the Commission's finding as to the nature of the accident is not against the manifest weight of the evidence.

¶ 32 Claimant next challenges the Commission's finding that Memorial's parking lot was neither defective nor hazardous. In furtherance of this challenge, claimant attempts to distinguish the facts of the present case from the circumstances presented in *Caterpillar Tractor Co.*, 129 Ill. 2d at 52, the case relied upon by the Commission.

¶ 33 In *Caterpillar Tractor Co.*, 129 Ill. 2d at 56, after the claimant completed his shift, he exited the employer's building through doors normally used by employees. When claimant stepped off of a curb, his right foot landed on a slight cement slope, which caused his foot to land half on the cement incline and half on the driveway. *Id.* at 57. The driveway was located on the employer's premises and was used by both employees and the general public. *Id.* After the supreme court determined that there was no evidence as to the existence of holes, rocks or obstructions, the court found that the condition of the premises was not a contributing cause of the claimant's injury, and there was no apparent connection to the claimant's employment other than that he was injured while on the employer's premises. *Id.* at 61. Ultimately, the supreme court determined that claimant failed to prove he was exposed to a risk not common to the general public. *Id.* at 62.

¶ 34 Here, unlike *Caterpillar Tractor Co.*, 129 Ill. 2d at 61, where the supreme court found that the condition of the premises was not a contributing factor, claimant asserts that her injuries were caused by the sloped area of the asphalt that appeared to be level with the sidewalk. As such, claimant asserts that her injuries were the result of a hazardous condition on the employer's premises. The Commission disagreed, finding that "the height differential (diminishing towards

the access ramp at the end of the sidewalk) between the curb and the blacktop was by design and not a defect." The Commission also found, and the parties' do not dispute, that the area where claimant fell was free of defects caused by water, ice, holes, rocks and debris.

¶ 35 Having reviewed the photographic exhibits, we cannot say an opposite conclusion is clearly apparent. The possibility of mis-stepping while stepping from a sidewalk, over a curb and onto a slanted surface in close proximity to an access ramp is not a risk peculiar to claimant's employment where there is simply no evidence of a defect. It is a well settled that injuries are not compensable if they arise "from a risk common to people generally." *Rodriquez v. Industrial Comm'n*, 95 Ill 2d 166, 176 (1982). Therefore, claimant failed to prove that her injuries arose from some risk connected with, or incidental to, her employment, or an exposure to a common risk to a greater extent than the general public. See *Caterpillar Tractor Co.*, 129 Ill. 2d at 63 (noting that "the mere fact that the duties take an employee to the place of the injury and that, but for the employment, [the employee] would not have been there, is not, of itself, sufficient to give rise to the right to compensation").

¶ 36 Based upon the foregoing analysis, we find the Commission's determination that claimant failed to prove she sustained an accidental injury arising out of her employment was not against the manifest weight of the evidence.

¶ 37 III. Conclusion

¶ 38 For the foregoing reasons, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 39 Affirmed.