FILED
September 19, 2022
Carla Bender
4th District Appellate
Court, IL

2022 IL App (4th) 220041WC-U

Workers' Compensation
Commission Division
Order Filed: September 19, 2022

No. 4-22-0041WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BROOKE HOOTS,	)	Appeal from the
	)	Circuit Court of
	)	Morgan County.
Appellant,	)	
	)	
v.	)	
	)	No. 2020-MR-106
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	
(DOLLAR GENERAL).	)	Honorable
	)	Christopher Reif,
Appellees.	)	Judge, Presiding.

JUSTICE BARBERIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Cavanagh concurred in the judgment.

¶ 1 *Held*: We affirm the circuit court's order confirming the Commission's decision, where the Commission's finding that claimant's injury did not arise out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 I. Background

¶ 3 On July 26, 2018, claimant, Brooke Hoots, filed a claim for benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2018)) against her employer, Dollar General, seeking benefits for an injury to her left foot and ankle that arose out of and in the course of her employment. Specifically, claimant contended that she parked her vehicle in a parking lot near employer's store in South Jacksonville, Illinois (South Jacksonville store). As claimant was walking into the South Jacksonville store to attend a mandatory employee training, she slipped on black ice, fell, and injured herself in the parking lot.

¶ 4 The following factual recitation was taken from the evidence adduced at the arbitration hearing held on October 30, 2019.

¶ 5 Claimant testified that employer hired her as a sales associate in November 2017 to work at its store in Woodson, Illinois (Woodson store). At the time she was hired, the Woodson store was under construction. Because of the construction, claimant attended mandatory training with other Woodson store employees at employer's South Jacksonville store, where she stocked shelves, ran the cash register, and engaged in customer service activities.

¶ 6 On November 19, 2017, claimant drove from her home to the South Jacksonville store. At approximately 7:50 a.m., claimant parked her vehicle in a parking lot located adjacent to employer's South Jacksonville store and near a strip mall that also had a close parking lot. According to claimant, the parking lot where she fell was for employer's store. She claimed she was permitted to park there, and that this lot was for employer's employees and customers. As claimant walked to the South Jacksonville store, she slipped and fell on black ice on the parking lot. Claimant, who carried a purse, drink, and folder containing training materials, landed on her left knee and leg, and felt sharp pain throughout her left ankle. Records demonstrated that an ambulance transported claimant to Passavant Hospital immediately after the fall. The hospital admitted claimant under the

care of Dr. Benjamin Stevens, who recommended she undergo ankle surgery for a left trimalleolar fracture. On November 29, 2017, claimant had surgery on her left ankle at Memorial Medical Center in Springfield, Illinois. At the time of the hearing, claimant, who denied a left ankle injury prior to this accident, experienced numbness and stiffness in her lower ankle three to five times a week since the fall.

¶ 7 On cross-examination, claimant testified that she was scheduled to train at the South Jacksonville store for three to four weeks. In the event construction was further delayed at the Woodson store, she would continue to work at the South Jacksonville store indefinitely. Claimant testified that employer neither instructed her where to park for training nor provided her with a parking pass. Instead, claimant testified that employer "said we could park wherever we wanted to park," which included a parking lot in an adjoining strip mall. Claimant confirmed that her list of duties as a sales associate did not include shoveling snow or placing salt down on the parking lot. To her knowledge, the parking lot was open to employees and customers of the surrounding businesses, which included employer.

¶ 8 On November 20, 2019, the arbitrator found that claimant failed to prove that the accident arose out of and in the course of her employment and denied benefits. The arbitrator concluded that the parking lot where claimant fell was open equally to both the general public and employer's employees, thus she was not at a greater risk than the general public when she fell. The arbitrator noted that claimant failed to offer credible evidence to support a finding that employer either owned or maintained the parking lot; she did not present evidence that she entered or exited the store any more frequently each day of training than any customer who came into the store; and claimant admitted that employer did not direct its employees where to park. Moreover, the arbitrator determined there was no damage or defect noted in the lot, given claimant fell on black ice. The

arbitrator also determined that there was no evidence that claimant's folder she carried impacted her fall. Additionally, the arbitrator concluded that claimant failed to provide credible evidence that she was a traveling employee. In making this determination, the arbitrator determined that claimant failed to provide the distance to South Jacksonville store compared to the Woodson store. Claimant did not provide evidence that she was paid for her travel time and expenses, and claimant testified that she would continue to work at the South Jacksonville store until the Woodson store opened.

¶ 9 Because the arbitrator concluded that claimant failed to prove that an accident arose out of and in the course of her employment on November 19, 2017, and therefore did not sustain accidental injuries which arose out of and in the course of her employment, it denied compensation on that basis and found claimant's remining issues moot. Claimant timely appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission).

¶ 10 On August 31, 2020, the Commission affirmed the arbitrator's decision and found claimant's injury not compensable pursuant to *Walker Bros. v. Ill. Workers' Comp. Comm'n,* 2019 IL App (1st) 181519WC. With reliance on *Walker Bros.*, the Commission concluded that the parking lot was neither owned nor maintained by employer, claimant was not directed where to park when she attended training, and there was no evidence that the parking lot was a route required by employer. The Commission also determined that the parking lot was open to the general public, including customers of nearby businesses. Accordingly, the Commission concluded that claimant failed to prove an accident arose out of and in the course of her employment.

¶ 11 On September 21, 2020, claimant sought judicial review of the Commission's decision in the circuit court of Morgan County, which confirmed the Commission's decision. Claimant filed a timely notice of appeal on January 5, 2022.

¶ 12 II. Analysis

¶ 13 At issue is whether claimant's injury arose out and in the course of her employment. Whether a claimant's injury arose in the course of her employment is a question of fact to be resolved by the Commission, and the Commission's determination will not be disturbed on review unless it is against the manifest weight of the evidence. *Cox v. Illinois Workers' Compensation Comm'n,* 406 Ill. App. 3d 541, 546 (2010). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n,* 228 Ill. App. 3d 288, 291 (1992). Where the inferences drawn by the Commission are reasonable, such inferences cannot be disregarded because other inferences might have been drawn from the same facts. *Berry v. Industrial Comm'n,* 99 Ill. 2d 401, 406-07 (1984).

¶ 14 An employee's injury is compensable under the Act only if it arises out of and in the course of the claimant's employment. 820 ILCS 305/2 (West 2018). " "The general rule is that the 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 employment, and, hence, is not compensable.' " *The Venture-Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n,* 2013 IL 115728, ¶ 16 (quoting *Commonwealth Edison Co. v. Industrial Comm'n,* 86 Ill. 2d 534, 537 (1981)). The rational for this rule is that the employee's trip to and from work is the product of her own decision as to where she wants to live, which is a matter her employer ordinarily has no interest. *The Venture-Newberg-Perini, Stone & Webster,* 2013 IL 115728, ¶ 16.

¶ 15 An exception applies, however, when the employee is a "traveling employee." *Id.* ¶ 17. The determination of whether an injury to a traveling employee arose out of and in the course of employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n,* 109 Ill. 2d 194, 199 (1985). A "traveling employee" is one who is required to travel away from her employer's premises in order to perform her job (*Jensen v. Industrial Comm'n,*

305 Ill. App. 3d 274, 278 (1999)) and for whom travel is an essential element of her employment (*Urban v. Industrial Comm'n,* 34 Ill. 2d 159, 163 (1966)). As a general rule, a traveling employee is held to be in the course of her employment from the time she leaves home until she returns. *Hoffman*, 109 Ill. 2d at 199; *Cox*, 406 Ill. App. 3d at 545. "An injury sustained by a traveling employee arises out of h[er] employment if [s]he was injured while engaging in conduct that was reasonable and foreseeable, *i.e.*, conduct that 'might normally be anticipated or foreseen by the employer.' " *Kertis v. Illinois Workers' Compensation Comm'n,* 2013 IL App (2d) 120252WC, ¶ 16 (quoting *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 her employer is normally a factual question to be resolved by the Commission, and where the facts or inferences are in dispute, we should affirm the Commission's determination unless it is against the manifest weight of the evidence. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 17.

¶ 16 Claimant argues, similar to the claimant in *Kertis,* 2013 IL App (2d) 120252WC, that she was a traveling employee. In the instant case, it is undisputed that claimant was hired to work at employer's Woodson store. Due to continued construction at the Woodson store, however, she attended training at employer's South Jacksonville store. According to claimant, once she left her home on November 17, 2019, to travel to employer's South Jacksonville store, she was in the course of her employment. We disagree.

¶ 17 An injury suffered by a traveling employee is compensable under the Act if the injury occurs while the employee is traveling for work away from her employer's premises (*Jensen,* 305 Ill. App. 3d at 278) and for whom travel is an essential element of her employment (*Urban,* 34 Ill. 2d at 163). Here, there is no evidence that claimant embarked on a work-related trip. Dissimilar to the claimant in *Kertis,* 2013 IL App (2d) 120252WC, ¶ 18, who was required, nearly every day, to travel between

two bank branches in Illinois to fulfill his job duties, here, claimant merely made her commute to employer's premises when the injury occurred. Although we recognize that claimant attended training at a different location away from the original work site, all other employees hired for the Woodson store also commuted to the South Jacksonville store for training, because the Woodson store was under construction. Moreover, there was no evidence that employer reimbursed claimant for her travel expenses, nor did it assist her in making travel arragements. Thus, due to these facts, the evidence does not support a finding that claimant's travel was an essential element of her job, which would render her a traveling employee.

¶ 18 Next, claimant argues that her case is distinguishable to *Walker Bros*, 2019 IL App (1st) 181519WC and thus her injury is compensable, because the parking lot she parked in was adjacent to employer's South Jacksonville store; customers and other employers parked in the lot to gain access to employer's store; and the parking lot was "associated exclusively" with employer's store. Moreover, claimant asserts that she parked in "the default location" to access the Jacksonville store, especially given that the parking lot was "clearly separated from another adjacent lot that was intended for use by customers going to nearby businesses." We disagree.

¶ 19 Generally, the general premises rule is at play " 'when an employee slips and falls at a point off the employer's premises while traveling to or from work, the resulting injuries do not arise out of an in the course of the employment and are not compensable under the Act.' "*Id* ¶ 21 (quoting *Joiner v. Industrial Comm'n*, 337 Ill. App. 3d 812, 815 (2003)). However, our supreme court noted an exception when an employer " 'provides' " a parking lot to its employees. *Walker Bros*, 2019 IL App (1st) 181519WC, ¶ 21 (quoting *De Hoyos v. Industrial Comm'n*, 26 Ill. 2d 110, 113 (1962)). Our supreme court has determined that "[t]he decisive issue in parking lot cases usually is whether or not the lot is owned by the employer, or controlled by the employer, or is a route required by the

employer." *Maxim's of Illinois, Inc. v. Industrial Comm'n*, 35 Ill. 2d 601, 604 (1966). Thus, "[t]he employer's control or dominion over the parking lot is a significant factor in the analysis." *Joiner*, 337 Ill. App. 3d at 816. Where the facts are undisputed and susceptible to only a single inference, the question is one of law and subject to *de novo* review. *Id.* at 815.

¶ 20 With these principles in mind, we must determine whether employer "provided" the parking lot in the instant case to its employees. As stated above, we must determine whether or not the lot was (1) owned by employer; (2) controlled by employer or employer exercised dominion over the parking lot, and (3) was a route required by employer for claimant to traverse.

¶ 21 It is undisputed that employer did not own the parking lot in question. Additionally, the evidence showed that employer did not control the parking lot. There was no evidence that employer contributed to the maintenance of the parking lot in any way. Lastly, the evidence demonstrated that the parking lot adjacent to employer's parking lot was not part of a route employer required claimant to traverse. In fact, claimant testified that employer neither instructed her where to park nor provided her with a parking pass. Instead, claimant testified that employer "said we could park wherever we wanted to park," which included a parking lot in an adjoining strip mall that was near the South Jacksonville store. Accordingly, the evidence demonstrates claimant was not required to park in the parking lot where she fell. Based on the above, we cannot conclude that claimant's injury arose out of and in the course of her employment with employer.

¶ 22 III. Conclusion

¶ 23 For the reasons stated, we affirm the judgment of the circuit court of Morgan County confirming the decision of the Commission.

¶ 24 Affirmed.