

2024 IL App (5th) 231150WC-U
No. 5-23-1150WC
Order filed October 17, 2024

NOTICE: This order was filed under Supreme Court Rule 23(b) and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

THE CITY OF WATERLOO,)	Appeal from the
Appellant,)	Circuit Court of
v.)	Monroe County
)	No. 23MR11
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i>)	Jeremy R. Walker,
(David Dwight Loless, Appellee).)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Mullen, and Barberis
concurred in the judgment.

ORDER

¶ 1 *Held:* The Illinois Workers' Compensation Commission's finding claimant suffered a compensable work-related accident is not against the manifest weight of the evidence.

¶ 2 On December 29, 2016, claimant, David Dwight Loless, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2016)). He sought benefits from his employer, the police department of the City of Waterloo (City), claiming he injured his left knee and ankle when he stepped into a hole during an arrest on November 21, 2016. Following a November 23, 2021, hearing, the arbitrator found claimant

successfully proved the accidental injury he sustained arose out of his employment and awarded him benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision with regard to claimant's left knee injury but reversed the decision with regard to claimant's left ankle injury. On judicial review, the Monroe County circuit court affirmed the Commission's decision. The City appeals.

¶ 3

I. BACKGROUND

¶ 4

On November 23, 2021, the arbitration hearing was conducted, with claimant testifying on his own behalf and Sergeant Trin Daws testifying for the City. Claimant testified he was 59 years old and had worked for the City as a police officer for 22 years; he worked as a lieutenant assigned as a first-line supervisor on the street for the last 12 years. His job duties included "common street cop activities." He estimated he got in and out of his patrol car 40 to 60 times per day during his 10-hour shift. He said typically when he exited his patrol car, he led with his left leg.

¶ 5

On the day claimant was injured, November 21, 2016, he had begun his shift at 4 p.m. He conducted a traffic stop of a suspected impaired female driver at approximately 5:30 p.m. on the side of Illinois Route 3, a two-lane highway. It was dark at the time. The shoulder of the road was three feet wide and "then off into the grassy ditch line." He administered field sobriety tests on the driver at the front of his patrol car. At some point, Sergeant Daws arrived as backup. Claimant decided to take the driver into custody. He walked to the rear door of his patrol car to make room for the arrestee in the back seat. As he walked back up, he "stepped over—there was a hole, a wash out, and [he] stepped over the wash out and took her—she was already in handcuffs. [He] had already secured her, and [he] turned to walk her back to the back of [his] vehicle, and she walked around the depression, and as [he] turned with her, you know, it slipped [his] mind, and

[he] stepped in with [his] left foot as [he] was turning, and that's when [he] felt a pop" in his left knee.

¶ 6 Claimant's counsel played the dashboard camera video of the incident for the arbitrator, having claimant narrate as it played. Claimant pointed to the moment when, as he was escorting the driver, his "foot disappear[ed] and then reappear[ed], and that's where the pop was, so right there." He explained his foot disappeared "when [it] was down in the depression, the washout." He described the area as a "rut." He noted that at the time of the "pop" in his knee, his elbow jolted, and his flashlight popped up as he landed in the rut. He immediately felt pain in his knee, but he continued with the arrest. Within the next day, he developed an egg-shaped swelling in his left knee. He said he did not mention his injury to Sergeant Daws because he "was in shock" and Daws was a subordinate. Claimant said he contacted Daws a day or two later to see if he had witnessed anything, and he reportedly had not.

¶ 7 Claimant explained he had previously been diagnosed with osteoarthritis in both knees. He had never before suffered a ligament tear in his left knee. In fact, he had never suffered any injury to his left knee before this night. His left leg was considered his "good leg," as his right knee was "five years overdue for treatment to be replaced." He was undergoing treatment in the form of cortisone injections for the osteoarthritis in both knees, but mainly for his right knee. He had never discussed or considered surgery on his left knee.

¶ 8 The day after the accident, claimant told his supervisor, Chief Michael Douglas, about his injury. Claimant filed an employee accident report, which was admitted into evidence. Douglas sent claimant for treatment at Mercy Corporate Health, and claimant followed up with orthopedist Dr. Thomas Fox, who ordered a magnetic resonance imaging scan (MRI). After reviewing the MRI, Dr. Fox diagnosed claimant with an anterior cruciate ligament (ACL) tear in

his left knee. Claimant said the workers' compensation carrier referred him for an independent medical evaluation (IME) with Dr. Mark Miller. According to claimant, Dr. Miller opined the ACL injury was a result of the work accident. Claimant was placed on light duty restrictions. After the IME, the carrier approved surgery on claimant's left knee. Claimant began treatment with Dr. Corey Solman, who recommended the same surgery. Claimant had the surgery at Des Peres Hospital on March 27, 2017, and thereafter participated in physical therapy.

¶ 9 Claimant testified he developed left ankle problems while engaged in physical therapy. Dr. Solman administered a cortisone injection into his ankle, which resolved the pain.

¶ 10 Dr. Solman released claimant to work with restrictions on July 28, 2017. Claimant worked from home. He had a city laptop, cellular telephone, and radio. He worked the 6 p.m. to 6 a.m. shift and was required to call in every 30 minutes to report his status.

¶ 11 On November 13, 2017, claimant attended another IME with Dr. John Krause. He said the conversation and physical examination lasted no more than 10 minutes with Dr. Krause, which did not allow claimant to fully explain or fully answer the questions. Dr. Krause released claimant to work full duty. However, claimant stated, given "the state of [his] knee in November 2017," he was unable to perform the regular duties of a "street officer." Claimant told the City he remained under the care and restrictions of Dr. Solman. He asked for accommodations but was denied, presumably due to Dr. Krause's opinion.

¶ 12 On December 6, 2017, at the request of Dr. Solman, claimant participated in a functional capacity evaluation (FCE). Thereafter, the therapist recommended permanent work restrictions relating to maximum lifting, office work only, elevation of the left leg, no confrontation or inmate contact, and no kneeling. According to claimant, the City never indicated a willingness to accept these restrictions.

¶ 13 Although the City never terminated claimant, he sought other employment through a temporary agency and started a new position with a new employer on July 15, 2018, performing desk work. At the time of the hearing, he was driving a truck for Beelman Truck Company. He said he would never be able to perform duties as a patrol officer due to his knee.

¶ 14 Claimant explained his current symptoms. He said he can only stand for approximately 15 minutes before his left leg goes numb and becomes “unstable and shaky.” He said the problems identified in his FCE continue and are unchanged.

¶ 15 The City called Sergeant Daws, who testified he had known and worked with claimant for 22 years. He said claimant walked with a limp for approximately 10 years, but Daws was not certain which leg claimant favored. He said he participated in an arrest with claimant on November 21, 2016, but he did not see or hear claimant injure his left knee.

¶ 16 Based on the foregoing testimony and the admitted medical records, including the medical bills, the arbitrator concluded claimant sustained a compensable injury. After finding claimant’s testimony credible, the arbitrator determined claimant’s injury arose out of and in the course of his employment. The arbitrator found claimant injured his left knee after he stepped in a rut on the side of a dark roadway while arresting someone. This injury occurred while claimant was performing his work duties and was classified as a risk directly associated with his employment as a police officer.

¶ 17 The arbitrator next concluded claimant’s current condition of ill-being related to both his left knee and left ankle were causally related to the work accident. When making this finding, the arbitrator gave no weight to Dr. Krause’s opinion of no causation because Dr. Krause did not examine or conduct any testing of claimant prior to claimant’s surgery. Drs. Solman and Miller both opined the accident caused claimant’s current condition of ill-being. In addition to the

medical testimony, the arbitrator relied on circumstantial evidence, finding that, before the injury to his knee, claimant was able to fully perform his duties as a police officer, but he was unable to do so after the injury. And, while being treated for his knee injury, claimant suffered a consequential injury to his ankle. The arbitrator found this subsequent ankle problem “emerged during his physical therapy following surgery.” Therefore, claimant’s ankle sprain was also causally related to the original work accident and injury.

¶ 18 The arbitrator found claimant’s medical services were reasonable and necessary and ordered the City to pay claimant’s medical expenses. Claimant was awarded temporary total disability benefits in light of the FCE and Dr. Solman’s opinion and imposed work restrictions. Claimant was also awarded permanent partial disability benefits for loss of 25% of the person as a whole due to the loss of an occupation as provided in section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2022)) because claimant was not able to return to his duties as a police officer.

¶ 19 On review, the Commission affirmed and adopted the arbitrator’s decision, with the exception of the causal finding as to claimant’s left ankle injury. The Commission reversed that causation determination, finding claimant failed to prove his left ankle condition was causally related to the work accident. The Commission found causation was “pure speculation, upon which liability cannot rest.” The Commission denied all benefits related to claimant’s left ankle.

¶ 20 On judicial review, the circuit court of Monroe County confirmed the decision of the Commission.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 The City appeals, claiming the Commission’s decision that claimant sustained an accidental injury arising out of and in the course of his employment on November 21, 2016, was

against the manifest weight of the evidence.

¶ 24 Under the Act, compensable injuries must arise out of and in the course of employment. 820 ILCS 305/1(d) (West 2016); *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Claimant has the burden of showing the injury was work related by a preponderance of the evidence. 820 ILCS 305/1(d) (West 2016). “The ‘arising out of’ component is primarily concerned with causal connection” and is satisfied if the claimant shows “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. “Whether an employee was acting within the course of the employment depends on the employment contract and the nature of the relationship, which must exist at the time of and in respect to the particular facts out of which the injury arose.” *Bagent v. Blessing Care Corp.*, 224 Ill. 2d 154, 165 (2007).

¶ 25 The issues of accident and causal connection present questions of fact for the Commission, and a reviewing court will not overturn the Commission’s decision unless it is against the manifest weight of the evidence. *Urban v. Industrial Comm'n*, 34 Ill. 2d 159, 161 (1966). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight of the testimony, and resolve conflicts in the evidence. *Sisbro*, 207 Ill. 2d at 206. For the Commission’s decision to be against the manifest weight of the evidence, the record must disclose that the opposite conclusion was clearly apparent. *Shafer v. Illinois Workers’ Compensation Comm’n*, 2011 IL App (4th) 100505WC, ¶ 35. “A claimant’s testimony, standing alone, may support an award where all of the facts and circumstances do not preponderate in favor of the opposite conclusion.” *Id.*

¶ 26 An initial step when considering the “arising out of” component of a workers’ compensation claim is to determine the type of risk to which the claimant was exposed at the time

of injury. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478 (2011). “Risks to employees fall into three groups: (1) risks distinctly associated with the employment; (2) risks personal to the employee, such as idiopathic falls; and (3) neutral risks that have no particular employment or personal characteristics.” *Id.* A risk is associated with one’s employment if, at the time of the occurrence, the employee was performing (1) acts that he was instructed to perform by the employer, (2) acts that he had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his assigned duties. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 46.

¶ 27 Here, the City does not dispute claimant was working as a patrol officer at the time of his claimed injury. Rather, the City disputes whether claimant was injured at all and whether a work-related accident actually occurred. The City claims the evidence relied upon by the Commission was inconsistent and thereby unreliable. We disagree.

¶ 28 We cannot say the Commission’s conclusion that claimant’s left knee condition is causally related to a November 21, 2016, work accident was against the manifest weight of the evidence. Claimant testified he blindly stepped into a rut on the side of a roadway while effectuating an arrest. He was jarred and heard a pop in his left knee. Although he had experienced some arthritic conditions in his left knee prior to this event, his left leg had been considered his “good leg.” That is, before this incident, he was capable of fully performing his duties as a patrol officer. After the event, diagnostic images showed a tear in his left ACL, which necessitated surgical intervention. Claimant’s doctor, Dr. Solman, and the City’s doctor, Dr. Miller, agreed claimant’s condition was related to this work accident.

¶ 29 The dashcam video was admitted into evidence and relied upon by the Commission. Dr. Solman had viewed the video and concluded it showed an accident consistent with claimant’s

knee injury. The City's first doctor, Dr. Miller, agreed after reviewing claimant's medical records and films. Although the City's second doctor, Dr. Krause, opined that claimant's condition was not related to a work accident, he had not watched the video and, according to claimant, did not adequately or thoroughly review claimant's condition or complaints. The City's other witness, Sergeant Daws, testified he did not see claimant misstep or hear from claimant that he had injured himself. However, Daws acknowledged it was dark and according to the dashcam video, he was not looking in claimant's direction at the time.

¶ 30 The Commission found claimant's testimony to be credible and gave "no weight to Dr. Krause's opinion regarding [claimant's] left knee because he did not examine [claimant] nor conduct any testing on [him] prior to his surgery." Further, the Commission found the circumstantial evidence that claimant was fully capable of performing his duties as a police officer before the accident and unable to do so after the accident corroborated claimant's explanation of his injury and how it had occurred. The medical evidence of record supported claimant's version of events as well.

¶ 31 Here, the City urges this court to reevaluate claimant's credibility. We will not do so because, as stated above, it is the function of the Commission to judge the credibility of witnesses and resolve any conflict in the evidence. See *Sisbro*, 207 Ill. 2d at 206. After our review of the record, we find the Commission's decision on the issue of accident and causation as it relates to claimant's left knee condition was not against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we affirm the circuit court's judgment, which confirmed the Commission's decision.

¶ 34 Affirmed.