2024 IL App (1st) 240057WC-U
No. 1-24-0057WC
Order filed September 27, 2024

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

HELPING HANDS CENTER,	)	Appeal from the Circuit Court
	)	of Cook County.
Appellant,	)	
	)	
v.	)	No. 23-L-50077
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION,	)	Honorable
	)	Patrick T. Stanton,
(Elizabeth Lamas, Appellee).	)	Judge, Presiding.

ORDER

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

¶ 1 *Held*: (1) Section 11 of the Workers' Compensation Act (820 ILCS 305/11 (West 2016)) does not bar recovery for claimant's injury; (2) the Commission's finding that claimant's injury arose out of her employment with respondent was not against the manifest weight of the evidence; and (3) the Commission's finding that claimant's current condition of ill-being is causally related to her work accident was not against the manifest weight of the evidence.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Elizabeth Lamas, worked as a medical assistant for respondent, Helping Hands Center. On June 19, 2017, claimant was decorating the office for her supervisor's birthday when she lost her balance, fell from a desk, and injured her right foot and the right side of her body. Claimant sought benefits for her injury pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2016)). Following a hearing, the arbitrator determined that claimant's injury arose out of and occurred in the course of her employment and that claimant's current condition of ill-being was causally related to her work accident. Reasoning that claimant was not engaged in a "party" or "recreational program" at the time of her injury, the arbitrator additionally determined that compensation was not barred by section 11 of the Act (820 ILCS 305/11 (West 2016)), which precludes an employee from recovering for accidental injuries incurred while participating in "voluntary recreational programs" unless the employee was ordered or assigned by the employer to so participate. The arbitrator awarded claimant medical expenses, temporary total disability (TTD) benefits, and permanent partial disability (PPD) benefits. A majority of the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Cook County confirmed. In this appeal, respondent argues that claimant was not entitled to benefits because section 11 of the Act bars recovery for her injury. Alternatively, respondent posits that the Commission erred in finding that claimant's injury arose out of her employment and that claimant's current condition of ill-being is causally related to her work accident. We affirm.

¶ 4 II. BACKGROUND

¶ 5 Respondent operates an agency for adults and children with developmental disabilities, providing day services, housing, and schooling. Prior to the events at issue, claimant had been an

employee of respondent for 17 years. Since 2010, claimant worked for respondent as a medical assistant in the nurse's office. Claimant testified that in this capacity, her duties included answering telephones, scheduling appointments, taking vitals, filing, faxing, and assisting the doctor.

¶ 6 On June 19, 2017, claimant was decorating the office for the birthday of her immediate supervisor, Kathlyn Thompson. Claimant was on top of a desk putting up streamers when she lost her balance and fell on her right side. Claimant recalled that, prior to June 19, 2017, she had decorated the office for some of her coworkers' birthdays and other celebrations, although she did not remember the number of times she had done so. According to claimant, it was "quite the norm at our job that we would celebrate each other's birthdays or if somebody was leaving for another job." Claimant noted that just a week before the accident, Thompson instructed her to decorate the office for Olga, a nurse who was leaving respondent's employ. Thompson called claimant on the morning of Olga's last day of work and instructed claimant to purchase streamers, balloons, and other decorations. Thompson reimbursed claimant for the cost of the items.

¶ 7 Claimant testified that on June 19, 2017, the day of the injury, she used the decorations that were left over from Olga's celebration to decorate the office for Thompson's birthday. Claimant used a stool to step onto a desk to reach the ceiling. Claimant lost her balance and fell on her right side, hitting her right hip first and then her whole body. She was not able to get up. One of her coworkers walked in and found her on the floor. The coworker helped her up from the floor and called claimant's supervisor. At that time, claimant was in severe pain and could not put any weight on her right foot. Thompson instructed the coworker to take claimant to the emergency room. Medical personnel diagnosed a foot fracture and instructed claimant to follow up with an orthopedist.

¶ 8 Claimant admitted that no one ordered or assigned her to put up decorations for Thompson's birthday on June 19, 2017. Claimant acknowledged that her actions were entirely voluntary, something she decided to do. Claimant agreed that she was not required to decorate for the event on June 19, 2017, but asserted that it was normal to decorate for special occasions like birthdays. She also agreed that no one ordered or instructed her to stand on the desk to hang streamers around Thompson's workstation. Claimant testified that she had never been disciplined for not decorating for a coworker's party or celebratory event.

¶ 9 Thompson testified that on June 19, 2017, she was employed by respondent as the associate director of nursing. Thompson was responsible for the overall health and safety of the clients who lived in respondent's housing units. Claimant reported directly to Thompson. Claimant's duties included ordering medication, running the clinic with the doctor, scheduling lab draws for patients, occasionally going to patient's houses to check on their medications, and ensuring that patients scheduled appointments.

¶ 10 Thompson testified she did not direct claimant to decorate the office for a party or celebratory event on June 19, 2017. Moreover, Thompson did not direct anyone in the days leading up to June 19, 2017, that he or she should decorate for a party on that date. Thompson testified that in her entire employment with respondent, she never directed, ordered, or assigned anyone to decorate the office for a party or a celebratory event. Thompson testified that she had voluntarily decorated in the past for holidays, birthdays, and babies. Nobody was required, ordered, or assigned to participate in those celebrations. Thompson agreed that decorating for the events was entirely voluntary. Nobody was disciplined, reprimanded, or fired for not decorating for or participating in a party or celebratory event.

¶ 11 Thompson further testified that she never ordered or assigned anyone to get up on a desk to hang decorations. Thompson did not tell claimant in the days leading up to June 19, 2017, that it was okay for her to climb on top of a desk to hang decorations for a party or celebratory event. If someone wanted to hang something high on the wall or on the ceiling, a ladder was stored on the premises, and the individual would have to get a key from the maintenance staff to access the storage area. On cross-examination, Thompson acknowledged that, although it was not a policy, it was a "fact" that the office was frequently decorated for birthdays and other events.

¶ 12 Following her injury on June 19, 2017, claimant was taken off work and was eventually treated by Dr. Robert Miklos. Dr. Miklos's diagnosis was twofold: (1) a Lisfranc fracture of the first/second metatarsal base of the right foot and (2) a fracture of the fourth metatarsal base of the right foot. Dr. Miklos recommended an open reduction internal fixation of the Lisfranc fracture with screw placement into the second metatarsal base. Dr. Miklos performed surgery on claimant's right foot on July 7, 2017. During the procedure, a screw was placed through the fracture site. The postoperative diagnosis was "Lisfranc's midfoot fracture dislocation, right foot." After a period of recovery and some physical therapy, claimant was released to return to work by Dr. Miklos. On September 19, 2017, claimant returned to work. Upon claimant's return, her coworkers decorated the office with balloons, streamers, and flowers to welcome her back.

¶ 13 Claimant followed up with Dr. Miklos and was released from his care on December 5, 2017. Claimant left her position with respondent in January 2018. In August 2018, claimant presented to her primary-care physician with complaints of right foot pain. Claimant testified that she did not sustain another injury to her foot. She explained that "it seemed like the screw was coming out [of her foot]. It was like a big bump *** [,] like the bone was sticking out. It looked

kind of deformed." Thereafter, claimant continued to have pain complaints, and she sought treatment with several other physicians. Claimant did not return to Dr. Miklos because he no longer accepted her insurance.

¶ 14 The records from the European Foot & Ankle Clinic indicate that claimant presented to Dr. Tomasz Szmyd for treatment on August 25, 2018. Claimant elected conservative treatment and she was instructed to follow up in four to six weeks. Claimant did not see Dr. Szmyd again until February 1, 2020, approximately 18 months after her initial visit. At that time, Dr. Szmyd discussed surgical options with claimant. Claimant testified that she did not have any other injury to her foot during the 18-month gap. On February 22, 2020, Dr. Szmyd administered a trigger-point injection around the symptomatic joint of the right foot. Dr. Szmyd again discussed surgical options and instructed claimant to return in four to six weeks.

¶ 15 Claimant did not seek further treatment until she presented to Dr. Ping Chan in March 2021. Claimant testified that she waited to seek additional treatment because of COVID and because she was afraid to go through surgery again. Claimant complained of a screw protruding from her right foot and right foot pain. Dr. Chan noted that claimant had a history of surgery of the right foot with placement of a screw. Upon examination, Dr. Chan noted an exostosis protruding on the base of the first metatarsal cuneiform area.[1] An X ray revealed a screw firmly in place. Dr. Chan discussed treatment options ranging from conservative care to surgery. Claimant

[1] An exostosis is "a spur or bony outgrowth from a bone or the root of a tooth." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/exostosis (last visited September 3, 2024).

opted to undergo surgery. On November 22, 2021, Dr. Chan performed surgery on claimant's right foot. The surgery consisted of an excision of the exostosis. During the procedure, Dr. Chan probed for the head of the screw. He noted that on X ray, the screw was embedded and not bothering the area. Accordingly, he decided to leave the screw in place rather than perform a dissection to search for the hardware. On December 2, 2021, claimant presented to Dr. Chan for follow up, complaining of moderate right foot pain. No subsequent follow-up was ordered, and claimant did not seek further medical treatment.

¶ 16 Admitted into evidence was a letter to claimant dated June 21, 2017, from respondent's claims administrator. The letter states that claimant's fall had been determined to be non-compensable based on the following: "The act of jumping off of a desk is not part of your assigned work duties, nor was it something your employer instructed you to do as part of your work. Therefore, your injury does not meet the criteria for being work related."

¶ 17 Based on the foregoing, the arbitrator concluded that claimant sustained a compensable injury. The arbitrator first determined that claimant's injury arose out of her employment because claimant's injury arose out of a risk distinctly associated with her employment, *i.e.*, she was performing an act which she might reasonably be expected to perform incident to her assigned duties. The arbitrator noted that while no one directly instructed or ordered claimant to decorate the office for her supervisor's birthday, it was a normal practice in the office to decorate for holidays, birthdays, and other events. Next, the arbitrator determined that claimant's injury occurred in the course of her employment because it happened when claimant was at her place of work and while she was performing an activity that she had performed previously (including at least one time when directed by her supervisor). Citing to *Elmhurst Park District v. Industrial*

Comm'n, 395 Ill. App. 3d 404 (2009), and *Glassie v. Papergraphics, Inc.*, 248 Ill. App. 3d 621 (1993), the arbitrator rejected the premise that section 11 of the Act (820 ILCS 305/11 (West 2016)) precludes recovery. The arbitrator reasoned that the act in which claimant was engaged at the time of her injury did not constitute participation in a "party" or "recreational program" because it did not involve "stopping work, sharing common food and drink, socializing," or similar activities. Additionally, based on a chain-of-events analysis, the arbitrator concluded that claimant's current condition of ill-being was causally related to her work accident. The arbitrator awarded claimant medical expenses, TTD benefits, and PPD benefits.

¶ 18 A majority of the Commission summarily affirmed and adopted the decision of the arbitrator. Commissioner Harris dissented. In Commissioner Harris's view, section 11 of the Act (820 ILCS 305/11 (West 2016)) barred recovery because claimant was participating in a voluntary recreational activity at the time of her injury, she had not been ordered or assigned by respondent to decorate for her supervisor's birthday, and her act of decorating the office to celebrate her supervisor's birthday was not an act inherent in her position as a medical assistant. On judicial review, the circuit court of Cook County confirmed the decision of the Commission. This appeal followed.

¶ 19 III. ANALYSIS

¶ 20 On appeal, respondent raises three issues. First, respondent argues that claimant was not entitled to benefits because section 11 of the Act (820 ILCS 305/11 (West 2016)) bars recovery for her injury. Second, respondent contends that the Commission erred in finding that claimant's injury arose out of her employment. Finally, respondent argues that the Commission's finding that

claimant's current condition of ill-being is causally related to her employment was against the manifest weight of the evidence. We address these issues *seriatim*.

¶ 21 A. Section 11 of the Act

¶ 22 An injury is compensable under the Act if the employee proves by a preponderance of the evidence that the injury arose out of and occurred in the course of his or her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). However, under section 11 of the Act (820 ILCS 305/11 (West 2016)), "[a]ccidental injuries incurred while participating in voluntary recreational programs including but not limited to athletic events, parties and picnics do not arise out of and in the course of the employment even though the employer pays some or all of the cost thereof." The exclusion in section 11 does not apply "in the event that the injured employee was ordered or assigned by his employer to participate in the program." 820 ILCS 305/11 (West 2016).

¶ 23 The Commission, in affirming and adopting the decision of the arbitrator, reasoned that the act in which claimant was engaged at the time of her injury did not constitute participation in a "party" or "recreational program" under section 11 of the Act because it did not involve "stopping work, sharing common food and drink, socializing," or similar activities. Respondent disputes the Commission's finding that recovery in this case is not barred by section 11 of the Act. Respondent emphasizes that claimant was not ordered or assigned to decorate the office for Thompson's birthday. Rather, her decision to do so was entirely voluntary. Respondent further argues that the Commission's interpretation of the term "recreational program" is too narrow in that section 11 does not limit "recreational programs" to parties or the other events listed in the statute. According to respondent, claimant admitted that the reason the office was decorated for birthdays and other

events was to "celebrate" these occasions. As such, it was no less a "recreational program" than a party and section 11 therefore bars recovery. We find respondent's argument unpersuasive.

¶ 24 Initially, we address two preliminary matters. First, it is undisputed that claimant's decision to decorate the office for her supervisor's birthday was voluntary. Both claimant and Thompson testified that claimant was neither ordered nor assigned by respondent to decorate. Thus, resolution of whether section 11 bars recovery turns on whether claimant was involved in a "party" or "recreational program" at the time of her injury. Second, we reject respondent's suggestion that the Commission restricted the term "recreational program" in section 11 to apply only to the three examples listed in the statute, *i.e.*, athletic events, parties, and picnics. We read nothing in the Commission's decision to support this claim. To the contrary, the Commission expressly found that the act in which claimant was engaged at the time of her injury did not constitute participation in a "party" *or* "recreational program." Respondent's suggestion to the contrary therefore finds no basis in the record.

¶ 25 Next, we examine whether the Commission erred in finding that the act in which claimant was engaged at the time of her injury did not constitute participation in a "party" or "recreational program" under section 11 of the Act. Whether, under the facts of a particular case, an activity constitutes a "party" or "recreational program" is a question of fact for the Commission. *Calumet School District No. 132 v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 153034WC, ¶ 32; *Cary Fire Protection District v. Industrial Comm'n*, 211 Ill. App. 3d 20, 25 (1991).[2] The Commission's determinations on factual matters will not be disturbed on appeal

[2] Both parties suggest this issue presents a question of law subject to *de novo* review.

unless they are against the manifest weight of the evidence. *City of Joliet v. Illinois Workers' Compensation Comm'n*, 2023 IL App (3d) 220175WC, ¶ 18. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Centeno v. Illinois Workers' Compensation Comm'n*, 2020 IL App (2d) 180815WC, ¶ 63.

¶ 26 Although the Act does not define "recreational program," we had occasion to construe the term in *Elmhurst Park District*, 395 Ill. App. 3d 404, a case cited by the Commission. In that case, the employee worked as a fitness supervisor for a local park district. He injured his right leg while playing in a wallyball game on respondent's premises during his work shift. On appeal, the employer challenged the Commission's award of benefits, arguing that the employee was precluded from recovering under the voluntary-recreational-activity exclusion set forth in section 11 of the Act. In rejecting the employer's argument, we observed that although section 11 provides several general examples of activities which may be considered "recreational," the Act does not expressly define the word. *Elmhurst Park District*, 395 Ill. App. 3d at 408-09. The rules of statutory construction therefore dictated that the word be given its ordinary and popularly understood meaning. *Elmhurst Park District*, 395 Ill. App. 3d at 409. Looking to a dictionary, we noted that

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Claimant cites to *Elmhurst Park District*, 395 Ill. App. 3d 404 (2009), for this proposition. In *Elmhurst Park District*, we applied *de novo* review to an issue of statutory construction. However, where, as here, the facts surrounding the nature of claimant's activities are disputed, the manifest weight standard applies. *Calumet School District No. 132*, 2016 IL App (1st) 153034WC, ¶ 32; *Cary Fire Protection District*, 211 Ill. App. 3d at 25. Regardless, the result we reach would be the same under the *de novo* standard.

the word "recreation" is commonly defined as " 'the act of recreating or the state of being recreated: refreshment of the strength and spirits after toil: DIVERSION, PLAY.' " (Emphasis in original.) *Elmhurst Park District*, 395 Ill. App. 3d at 409 (quoting Webster's Third New International Dictionary 1899 (2002)). We then explained:

> "Given the foregoing definition, we can certainly envision circumstances under which participation in a game of wallyball would constitute a 'recreational' activity and therefore fall within the voluntary-recreational activity exclusion set forth in section 11 of the Act. However, we do not believe that the facts of this case present such a situation. Similar to a professional athlete, 'recreation' is inherent in [the employee's] position as a fitness supervisor. See 2 A. Larson & L. Larson, Worker's Compensation Law § 22.04[1][b], at 22–12 through 22–16 (2007) ("The clearest possible example of 'recreation' which is the essence of the job itself is that of professional sports"). As such, we find it appropriate to consider why [the employee] agreed to play wallyball on the date he was injured. The evidence adduced at the arbitration hearing established that [the employee] initially declined [a coworker's] invitation to participate in the wallyball game because he was not feeling well and he had other work to do. However, [the coworker] persisted in her request and told [the employee] that absent his participation, the game would be cancelled because there would not be enough participants. Thereafter, [the employee] decided to 'help[ ] out' because he 'felt that [it] was part of [his] job' which was 'to promote * * * different classes and programs.' Based on this evidence, we conclude that [the employee] did not participate in the wallyball game for his own 'diversion' or to 'refresh' or 'strengthen' his spirits after toil. Rather, [the employee] participated in the game to accommodate [the employer's]

> customers. As such, we find that [the employee] was not engaged in a 'recreational' activity as contemplated by section 11 of the Act at the time of his injury." *Elmhurst Park District*, 395 Ill. App. 3d at 409.

¶ 27 The Commission also cited to *Glassie*, 248 Ill. App. 3d 621. In *Glassie*, the employee attended a holiday party on the employer's premises. Food was being prepared on portable burners located on a table. The employee was burned when flames erupted from one of the portable burners. The employee brought a negligence suit against her employer. The employer moved to dismiss, arguing that the employee's exclusive remedy was to pursue a claim under the Act. The trial court granted the motion to dismiss, and the employee appealed. On appeal, the reviewing court found that the motion to dismiss should not have been granted because the party constituted a "voluntary recreational program" under section 11 of the Act. *Glassie*, 248 Ill. App. 3d at 624-625. The *Glassie* court explained:

> "The record in this case indicates that [the employee] was injured at a party to which all *** employees were invited. [The employee's] affidavit indicates that [the president of her employer] told the *** employees that they were relieved of their duties for the day and were free to leave. [The employer's] answers to interrogatories indicate that employees were not required to attend the party. The record therefore indicates that the party at issue here was a 'voluntary recreational program' within the meaning of section 11 of the Act." *Glassie*, 248 Ill. App. 3d at 625.

¶ 28 Turning to the facts of this case, we cannot say that the Commission's finding that section 11 does not bar recovery in this case was against the manifest weight of the evidence. The Commission reasonably found a distinction between claimant's actions—decorating the office for

her supervisor's birthday—and a party. The Commission was guided by *Elmhurst Park District* and *Glassie.* Significantly, claimant was not injured while gathering, socializing, or sharing common food or drink. *Cf. Glassie*, 248 Ill. App. 3d at 624-25 (holding that the event at which the employee was injured qualified as a "party" where all employees were invited to the event, food was served, and the employees were relieved of their duties for the day); see also Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/party (last visited September 3, 2024) (defining "party" as "a social gathering"); Oxford English Dictionary Online, https://www.oed.com/dictionary/party_n?tab=meaning_and_use#31607635 (last visited September 3, 2024) (defining "party" as "[a] social gathering, esp. of invited guests at a person's house, typically involving eating, drinking, and entertainment and often held to celebrate a particular occasion"). Rather, at the time of the accident, claimant was alone. She was standing on a desk. She was attempting to hang streamers from a ceiling. Indeed, there is no evidence of record that claimant's activities consisted of anything other than decorating the work area of the person who was being recognized. Nor does the evidence indicate that the tradition of decorating an employee's workstation included breaking work for a party. Similarly, the Commission could reasonably conclude that claimant was not injured while otherwise participating in a "recreational program." In this regard, the evidence does not support the notion that claimant decorated her supervisor's work area for her own "diversion" or to "refresh" or "strengthen" her spirits after toil. See *Elmhurst Park District*, 395 Ill. App. 3d at 409. Thus, the Commission's finding that section 11 of the Act did not preclude recovery because claimant was not engaged in a "party" or a "recreational program" at the time of her injury was not against the manifest weight of the evidence.

¶ 29 B. Arising Out of Employment

¶ 30 Second, respondent contends that the Commission erred in finding that claimant's injury arose out of her employment. As noted earlier, to be compensable under the Act, an injury must "arise out of" and occur "in the course of" one's employment. 820 ILCS 305/1(d) (West 2016); *Sisbro, Inc.*, 207 Ill. 2d at 203; see also *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 32; *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006). Both elements must be present at the time of the injury to justify compensation. *McAllister*, 2020 IL 124848, ¶ 32; *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105 (2006). The employee bears the burden of proving by a preponderance of the evidence that his or her injury arose out of and occurred in the course of the employment. *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 477 (2011); *First Cash Financial Services*, 367 Ill. App. 3d at 105. Because respondent does not dispute that claimant's injury occurred in the course of her employment, we need only address whether claimant's injury arose out of her employment.

¶ 31 Typically, the question of whether an employee's injury arose out of his or her employment is one of fact. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19. With respect to factual matters, it is within the province of the Commission to judge the credibility of the witnesses, resolve conflicts in the evidence, assign the weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). As a court of review, we cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences may also reasonably be drawn from the same facts, nor may we substitute our judgment

for that of the Commission on such matters unless the Commission's findings are against the manifest weight of the evidence. *Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113 (1993). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC, ¶ 21.

¶ 32 The "arising out of" component is primarily concerned with causal connection. *McAllister*, 2020 IL 124848, ¶ 36. An injury is said to "arise out of" one's employment if its origin is in some risk connected with or incidental to the employment so that there is a causal connection between the employment and the accidental injury. *McAllister*, 2020 IL 124848, ¶ 36; *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989); *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 366 (1977). To determine whether a claimant's injury arose out of his or her employment, we must first categorize the risk to which the employee was exposed. *McAllister*, 2020 IL 124848, ¶ 36; *First Cash Financial Services*, 367 Ill. App. 3d at 105.

¶ 33 Illinois courts recognize three categories of risks: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks. *McAllister*, 2020 IL 124848, ¶ 38; *Baldwin*, 409 Ill. App. 3d at 478; *First Cash Financial Services*, 367 Ill. App. 3d at 105; *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Risks distinctly associated with the employment, *i.e.*, employment-related risks, are compensable under the Act. *McAllister*, 2020 IL 124848, ¶ 40; *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352 (2000) (Rakowski, J., specially concurring); *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. A risk is associated with one's employment if, at the time of the occurrence, the employee was performing (1) acts that

he or she was instructed to perform by the employer, (2) acts that he or she had a common-law or statutory duty to perform, or (3) acts that the employee might reasonably be expected to perform incident to his or her assigned duties. *McAllister*, 2020 IL 124848, ¶ 46; *Caterpillar Tractor Co.*, 129 Ill. 2d at 58. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his or her job duties. *McAllister*, 2020 IL 124848, ¶ 36; *Sisbro, Inc.*, 207 Ill. 2d at 204; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 18.

¶ 34 Personal risks include nonoccupational diseases, personal defects or weakness, and confrontations with personal enemies. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring); *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63. Although generally noncompensable, personal risks may be compensable where conditions of the employment increase the risk of the injury. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163 n.1. Neutral risks have no particular employment or personal characteristics. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring). Injuries from a neutral risk 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. *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 20; *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1014 (2011). The increased risk may be qualitative, such as some aspect of 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. *McAllister*, 2020 IL 124848, ¶ 44; *Metropolitan Water Reclamation District of Greater Chicago*, 407 Ill. App. 3d at 1014.

¶ 35 In this case, the Commission, in affirming and adopting the decision of the arbitrator, found that claimant's injury was the result of an employment-related risk. Specifically, the Commission determined that the act in which claimant was engaged at the time of her injury, decorating the office for her supervisor's birthday, was an act which respondent might reasonably expect claimant to perform incident to her assigned duties. The record contains sufficient support for the Commission's finding.

¶ 36 Significantly, while neither respondent nor claimant's supervisor expressly ordered or directed anyone to decorate the office for special occasions, the practice was routinely permitted. In this regard, claimant recounted that prior to the date of her accident, she had decorated the office for some of her coworkers' birthdays and other celebrations, although she did not remember the number of times she had done so. Claimant also recounted that just one week prior to the date of her accident, she was instructed by Thompson (her supervisor) to purchase decorations for a coworker who was leaving respondent's employ. Further, when claimant returned to work after her injury, her coworkers decorated the office with balloons, streamers, and flowers to welcome her back. Moreover, Thompson herself acknowledged that she had voluntarily decorated the office in the past for holidays, birthdays, and babies. Given that it was a routine practice in the office to decorate for employee's birthdays and other milestones, the Commission could reasonably infer that decorating the office for such special occasions was incident to the fulfillment of claimant's duties. As such, the Commission's finding that claimant's injury was caused by an employment risk and therefore arose out of her employment was not against the manifest weight of the evidence.

¶ 37 Respondent nevertheless insists that decorating for her supervisor's birthday was not an act "reasonably anticipated incident to [claimant's] assigned job duties." Respondent points out that claimant was employed as a medical assistant in the nurse's office. In this position her duties included answering telephones, scheduling appointments, taking vitals, filing, faxing, assisting the doctor, ordering medication, and checking on patients in their homes. Respondent argues that decorating the office for a coworker's birthday or other special occasion is not "incident to" any of these duties and it does not bear any relationship to the nature of respondent's business. Respondent cites to several cases that, in its view, support its position. See, *e.g.*, *McAllister*, 2020 IL 124848, ¶¶ 47-56 (holding that because the employee's duties as a sous chef involved arranging the restaurant's walk-in cooler and because the employee had injured his knee while looking in the cooler for carrots misplaced by a coworker, the injury was incident to fulfilling his assigned duties); *Steak 'n Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 150500WC, ¶¶ 37-38 (concluding that waitress/manager who injured her hand wiping down restaurant table suffered an employment-related injury because at the time of the occurrence she was engaged in an activity her employer might reasonably expect her to perform in the fulfillment of her duties); *Mytnik v. Illinois Workers' Compensation Comm'n*, 2016 IL App (1st) 152116WC, ¶¶ 44-45 (finding that assembly-line worker who injured his back reaching down to grab a bolt that had fallen onto the assembly line suffered an employment-related injury because the risk associated with claimant's act of bending to pick up the bolt was a risk distinctly associated with his employment); *Young v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130392WC, ¶¶ 22-24 (holding that inspector who injured his shoulder bending down and reaching into a box to retrieve a machine part for inspection suffered an employment-related injury because at the time

of the occurrence he was engaging in an activity his employer might reasonably expect him to perform in the fulfillment of his job duties). We reject respondent's contention. As discussed earlier, the undisputed testimony from both claimant and Thompson was that the office was frequently decorated for birthdays and other events. Thompson even admitted that she decorated the office on occasion. If it was the practice of the office supervisor to decorate, the Commission could reasonably infer that decorating the office constituted an activity that respondent might reasonably expect its employees to perform incident to their job duties. Stated differently, the fact that claimant, her supervisor, and other employees routinely decorated the office for special occasions rendered the activity incident to their job even if decorating for special events was not expressly part of their job description.

¶ 38 Respondent also directs us to *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38 (1987), and *Junior v. Illinois Workers' Compensation Comm'n*, 2022 IL App (4th) 210341WC-U, for the proposition that an injury does not arise out of one's employment where the employee voluntarily exposes himself to an unnecessary danger separate from the job. But claimant's reliance on these cases is misplaced.

¶ 39 In *Orsini*, the employee, a mechanic, was injured while working on his personal car with his employer's permission. The supreme court determined that the employee's injury did not arise out of his employment. *Orsini*, 117 Ill. 2d at 45-49. The court reasoned that the employee was injured due to a personal risk since he was injured while performing an act of a personal nature solely for his own convenience. *Orsini*, 117 Ill. 2d at 46-47. The court acknowledged that the employee had the employer's express permission, but stated that the acquiescence of an employer, standing alone, cannot convert a personal risk into an employment risk. *Orsini*, 117 Ill. 2d at 47-

48. Here, in contrast, claimant was not injured while performing an act of a personal nature solely for her own convenience. Additionally, there was evidence of more than mere knowledge or acquiescence to the activity that resulted in claimant's injury. The evidence established that it was a routine practice to decorate the office and that claimant decorated the office at least once at the express direction of her supervisor.

¶ 40 *Junior*, 2022 IL App (4th) 210341WC-U, is also inapposite. In that case, the employee was hired by a staffing company to remove debris from a fence and mow a city lot. While performing these duties, the employee sustained injuries when a firework he found exploded. We held that the employee's injury did not arise out of his employment because the credible evidence established that the employee lit the explosive himself. *Junior*, 2022 IL App (4th) 210341WC-U, ¶¶ 53-55. In *Junior*, there was no evidence that the employer had knowledge of or acquiesced in any way to the employee lighting the firework. Here, in contrast, the evidence established that it was a routine practice to decorate the office and that claimant decorated the office at least once at the express direction of her supervisor.

¶ 41 In short, for the reasons set forth above, we conclude that the Commission's finding that claimant's injury arose out of her employment was not against the manifest weight of the evidence.

¶ 42 C. Causation

¶ 43 Finally, respondent argues that the Commission's finding that claimant's current condition of ill-being is causally related to her employment was against the manifest weight of the evidence. Respondent does not dispute that claimant's initial injuries were causally related to her work accident. Respondent notes, however, that following her release from Dr. Miklos's care on December 5, 2017, there were two extended periods of time during which claimant did not seek

medical care for her foot. Additionally, respondent contends that claimant did not offer any opinion testimony establishing that her medical care following these gaps in treatment was causally related to the work accident of June 19, 2017. As such, respondent argues that it was against the manifest weight for the Commission to find that claimant's condition was causally related to her fall after her discharge from Dr. Miklos's care on December 5, 2017.

¶ 44 To recover compensation under the Act, an employee must prove by a preponderance of the evidence all elements of his or her claim, including that a causal connection exists between the employee's condition of ill-being and his or her work accident. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). Medical evidence, however, is not essential to support a finding that a causal relationship exists between an employee's work duties and his or her condition of ill-being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester*, 93 Ill. 2d at 63-64. Moreover, an occupational accident need not be the sole or principal causative factor in the resulting condition of ill-being, as long as it was *a* causative factor. *Sisbro, Inc.*, 207 Ill. 2d at 205. Hence, an employee need prove only that some act or phase of his or her employment was a causative factor in the resulting injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005).

¶ 45 Whether a causal relationship exists between a claimant's employment and his or her condition of ill-being is a question of fact. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984); *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 52. It is the function of the Commission to decide questions of fact, judge

the credibility of witnesses, and resolve conflicts in the evidence. *Hosteny*, 397 Ill. App. 3d at 674. This is especially true with respect to medical issues, to which we owe the Commission heightened deference because of the expertise it possesses in the medical arena. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). As a reviewing court, we cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences may also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless the Commission's findings are against the manifest weight of the evidence. *Zion-Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113 (1993). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent, *i.e.*, no rational trier of fact would have agreed with the Commission. *Ravenswood Disposal Services v. Illinois Workers' Compensation Comm'n*, 2019 IL App (1st) 181449WC, ¶ 15.

¶ 46 Applying these standards, we find ample evidence to support the Commission's finding that claimant established a causal connection between her work-related accident of June 19, 2017, and the condition of ill-being involving her right foot after December 5, 2017. Claimant testified that after she was released from the care of Dr. Miklos, she did not have any other injury to her right foot, but continued to experience pain. She noticed a bump in her foot and thought it was a bone or the protrusion of the screw placed during her initial surgery. Claimant did not return to Dr. Miklos because he no longer accepted her insurance. Instead, claimant sought treatment from Dr. Szmyd. Claimant received conservative care from Dr. Szmyd, but did not experience any improvement. She subsequently sought care from Dr. Chan who noted an exostosis protruding on the base of the first metatarsal cuneiform area. Dr. Chan excised the exostosis. Although no doctor

expressly offered an opinion that claimant's condition after December 5, 2017, was causally related to her work accident, this was a reasonable conclusion based on the evidence of record. In this regard, the evidence demonstrates that claimant did not sustain another injury to her right foot after she was released from Dr. Miklos's care, yet she continued to experience symptoms involving her right foot. Given this record, we conclude that the Commission's causation finding was not against the manifest weight of the evidence.

¶ 47 Respondent protests that the evidence does not demonstrate a continuous chain of disability because claimant's second surgical condition involved the first metatarsal joint, but the screw for the Lisfranc's fracture was over the second metatarsal joint. Thus, respondent reasons, expert medical testimony was necessary to establish a causal link. We disagree. Although Dr. Miklos's surgical report indicates that a screw was placed at the second metatarsal base, he diagnosed a Lisfranc fracture of the *first/second* metatarsal base. Thus, the injury to claimant's right foot clearly involved the first metatarsal joint. As a result, we do not find respondent's argument on this point persuasive.

¶ 48 IV. CONCLUSION

¶ 49 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission awarding workers' compensation benefits to claimant.

¶ 50 Affirmed.