

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
THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ARMALINE MIRRETTI,	)	Appeal from the Circuit Court
	)	of the 18 th Judicial Circuit
Appellant,	)	
	)	
v.	)	No. 25 MR 380
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i>	)	Honorable
	)	Terra Costa Howard,
(Elmhurst University, Appellee).	)	Judge, presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Holdridge and Justices Mullen and Cavanagh concurred in the judgment.
Justice Barberis dissented.

ORDER

¶ 1 Claimant, Armaline Mirretti, filed an application for adjustment of claim under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2022)), seeking benefits for an accident that occurred while claimant was employed by Elmhurst University (Elmhurst). The Illinois Workers' Compensation Commission (Commission) denied this application, the circuit court confirmed that decision, and claimant has now appealed to this court. For the following

reasons, we affirm the judgment of the circuit court which confirmed the decision of the Commission.

¶ 2 On December 5, 2023, claimant filed an application for adjustment of claim seeking benefits for injuries she sustained to her “right ankle/foot” on October 31, 2023, while she was employed by Elmhurst. A hearing on the claim was conducted before an arbitrator in August 2024.

¶ 3 The evidence presented therein included several sets of documents that were admitted without objection, including claimant’s medical records related to the incident. Throughout the hearing, the parties indicated that the nature of claimant’s injuries and the reasonableness of her medical treatment were not in dispute. Rather, the disputed issues before the arbitrator included whether claimant’s injury arose out of and was incurred in the course of her employment (820 ILCS 305/2 (West 2022)), and more specifically the proper application to this matter of the exception for injuries incurred while participating in voluntary recreational programs contained in section 11 of the Act (820 ILCS 305/11 (West 2022)). We will therefore limit our discussion to the facts relevant to those issues.

¶ 4 At the hearing, the arbitrator heard testimony from claimant, James Fitzgerald, and John Escalante. Their testimony generally established that Elmhurst holds a mandatory meeting, called the Bluejay Buzz (the school’s mascot is a bluejay), multiple times per year. During the meetings, the president of the university provides an update on the state of the college. Attendance at these meetings is mandatory. Around Halloween every year, the event is called the “BOOjay Buzz.” The BOOjay Buzz was first held around 2017. The information relayed during the BOOjay Buzz was the same as during the regular Bluejay Buzz meetings. However, at the BOOjay Buzz, a costume contest was also held.

¶ 5 Claimant testified that she had been employed at Elmhurst for 18 years and was then working for the Office of Admissions. She was a 60-year-old avid cyclist who was also in charge of the university student bicycle loan program, through which she would obtain and refurbish used bikes and make them available for students to rent during the school year. She was known around the campus as the “bike girl.”

¶ 6 Claimant attended every Bluejay Buzz, as the meetings were mandatory. Prior to the 2023 BOOjay Buzz, the Office of Admissions voted on a “Barbie and Ken” theme for the costume contest portion of the meeting. Claimant was originally not going to participate, as the prior two years claimant spent time and money on costumes that went unused. Claimant spoke to her supervisor and changed her mind about participating. She informed her husband that she had changed her mind and was going to dress as “Bicycle Barbie.” Claimant painted a helmet pink and collected a pink jersey and socks to wear. She also used an older, used bicycle from the bicycle program as part of her costume.

¶ 7 On October 31, 2023, claimant attended the BOOjay Buzz and reported on the bicycle program. After all the announcements were concluded, the president of Elmhurst asked that anyone who wanted to participate in the individual costume contest to step to the front. Claimant then went to retrieve her bicycle to participate in the costume contest. While riding her bicycle, claimant fell and experienced a right ankle fracture.

¶ 8 After her injury, claimant was off work for nine days. She was given a get-well card by her supervisor, who wrote: “I hope you heal quickly. Remind me not to encourage you to dress up for Halloween again.” After nine days, she started working four hours per day from home through the beginning of January 2024. Claimant underwent surgery and had hardware placed in her ankle for

stability, and she also underwent physical therapy. Her medical bills were either unpaid or paid by her husband's insurance.

¶ 9 Claimant returned to full-time remote work in January 2024. She returned to in-office, full-time duty in April 2024. At the time of the hearing, claimant was not currently undergoing physical therapy.

¶ 10 Fitzgerald testified that he had been employed by Elmhurst for 11 years and was the Executive Director of Human Resources. He was present at the BOOjay Buzz in 2023, as all employees working daytime shifts were expected to attend. He did not wear a costume, as wearing a costume was not mandatory.

¶ 11 Escalante testified that he witnessed claimant riding her bicycle, which slipped from underneath her, causing her to fall. Riding the bicycle was not a safe act, as there were numerous people, tables, and chairs present.

¶ 12 On this evidence, the arbitrator found that claimant “failed to prove that an accident occurred, which arose out of and in the course of her employment with [Elmhurst]. Therefore, all claims for compensation are denied.” The arbitrator relied upon the exception for injuries incurred while participating in voluntary recreational programs contained in section 11 of the Act and concluded that claimant's injuries were non-compensable under the Act because they occurred during a voluntary recreational activity; *i.e.*, the costume contest portion of the BOOjay Buzz event. Specifically, the arbitrator concluded that: “The Boojay Buzz costume party was a Section 11 voluntary recreational activity. Petitioner bears the burden of showing that her participation in the event was mandatory and not voluntary. She failed to meet that burden and, therefore, her injury did not arise out of and in the course of her employment.”

¶ 13 The arbitrator also concluded that “[a]ssuming *arguendo* that the Boojay Buzz was not a Section 11 voluntary recreational activity, Petitioner’s injury nonetheless did not arise out of her employment. The risk that Petitioner would fall off a bicycle being used as part of a costume was personal and not an employment related risk.”

¶ 14 Claimant appealed the arbitrator’s decision to the Commission. The Commission affirmed, adopting the arbitrator’s decision in part and modifying it in part. Specifically, it affirmed the arbitrator’s findings as to section 11 of the Act’s applicability to this matter, concluding: “The facts of this case establish that Petitioner was involved in a voluntary recreational activity at the time of the alleged accident and that benefits were appropriately denied pursuant to Section 11 of the Act.” However, the Commission struck the arbitrator’s “personal risk analysis.” One of the Commissioners filed a dissent, concluding: “In my view, Petitioner being injured while participating in the costume contest is no different than an employee being injured playing basketball or softball at a mandatory company picnic. Those cases are compensable. I believe the mandatory attendance at the event is controlling.”

¶ 15 Claimant then appealed the Commission’s decision to the circuit court. The circuit court confirmed the Commission’s decision, and this appeal followed.

¶ 16 On appeal, the claimant contends that the Commission both misconstrued the relevant law (section 11 of the Act) and misapplied that law to the facts of this case. We disagree.

¶ 17 An employee’s injury is typically compensable under the Act only if it “arises out of” and “in the course of” her employment. 820 ILCS 305/2 (West 2022); *Bolingbrook Police Department v. Illinois Workers’ Compensation Comm’n*, 2015 IL App (3d) 130869WC, ¶ 36. The employee bears the burden of proving each of these elements by a preponderance of the evidence. *Id.* An injury occurs in the course of the employment when it is sustained while a claimant is at work or

while she performs reasonable activities in conjunction with her employment. *McAllister v. Illinois Workers' Compensation Comm'n*, 2020 IL 124848, ¶ 34. An injury arises out of one's employment if it originates from a risk connected with, or incidental to, the employment, so as to create a causal connection between the employment and the accidental injury. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194 (2002). The question of whether a claimant's injury arose out of her employment is a question of fact to be resolved by the Commission, whose finding will not be disturbed unless it is against the manifest weight of the evidence. *McAllister*, 2020 IL 124848, ¶ 30. Factual determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the Commission. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 18 However, “[w]hether a claimant must prove certain elements to establish a compensable claim is purely a question of law and it is therefore reviewed *de novo*.” *Baggett*, 201 Ill. 2d at 194. And, determining whether an incorrect legal standard was applied requires a reviewing court to first determine the correct legal standard, which is also a question of law that we review *de novo*. *Myrick v. Union Pacific R.R. Co.*, 2017 IL App (1st) 161023, ¶ 21. Finally, the interpretation of a statute is once again a question of law subject to *de novo* review. *Calumet School District No. 132 v. Illinois Workers' Comp. Comm'n*, 2016 IL App (1st) 153034WC, ¶ 32. In interpreting a statute, our primary goal is to ascertain and give effect to the intent of the legislature. *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 253 (2008). The best indication of legislative intent is the plain and ordinary language of the statute itself. *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1203 (2006).

¶ 19 When an appeal is taken following entry of judgment by the circuit court on review from a decision of the Commission, this court reviews the ruling of the Commission, not the judgment

of the circuit court. *Ravenswood Disposal Services v. Illinois Workers' Comp. Comm'n*, 2019 IL App (1st) 181449WC, ¶ 13.

¶ 20 The relevant portion of section 11 of the Act provides:

“Accidental 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 employment even though the employer pays some or all of the cost thereof. This exclusion shall not apply in the event that the injured employee was ordered or assigned by the employer to participate in the program.” 820 ILCS 305/11 (West 2022).

¶ 21 Several decisions of this court have previously discussed this section of the Act. Most recently, this court considered the case of a middle school science teacher seeking compensation under the Act for an accidental injury he sustained while participating in an after-school student/teacher basketball game in the employer's gymnasium. *Calumet*, 2016 IL App (1st) 153034WC, ¶ 1. This court found the Commission's conclusion that the section 11 exclusion did not apply, as the exception to that exclusion did, was not against the manifest weight of the evidence where:

“The evidence presented at the arbitration hearing established that the claimant was not a basketball player and did not want to participate in the student/teacher basketball games. He repeatedly tried to avoid having to participate in the games. Had his principal not repeatedly pressured him to participate in the games, he would not have done so of his own accord. *** Moreover, he testified that he considered attendance and participation in after-school events involving the students to be a part of his job as a teacher.” *Id.* ¶ 35.

¶ 22 In *Elmhurst Park District v. Illinois Workers' Comp. Comm'n*, 395 Ill. App. 3d 404, 405 (2009), the claimant was employed by a local park district when he injured his right leg while

playing wallyball with some of the employer's customers. This court again found the Commission's conclusion that the section 11 exclusion did not apply was not against the manifest weight of the evidence, where the evidence adduced at the arbitration hearing established that claimant 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 claimant that absent his participation, the game would be cancelled because there would not be enough participants." *Id.* at 409. This court also noted and relied upon the fact that claimant's written job description included " '[p]romot[ing] Elmhurst Park District programs' " among his responsibilities, he was required to " '[d]evelop and maintain positive customer service with internal and external customers' " and "claimant testified that he felt that participating in the wallyball game was part of his job because one of the requirements of his position was to help out with any programs or classes respondent offered its patrons." *Id.* at 410.

¶ 23 In contrast, this court concluded that the general exclusion contained in section 11 of the Act did apply in other circumstances. For example, in *Gooden v. Industrial Comm'n*, 366 Ill. App. 3d 1064, 1065 (2006), we considered an application for benefits under the Act from an employee that was injured at a company picnic. We concluded:

"[claimant] did not face the prospect of losing pay or a personal/vacation day as a consequence of foregoing the picnic. Indeed he did not face any loss or repercussion at all. If he chose not to attend the picnic, he could simply work the entire day and be paid just like any other day. These facts reveal no error in the Commission's decision that [claimant] was not assigned to attend the company picnic. On the instant record, the Commission could have reasonably concluded that he made a voluntary choice. Section 11 of the Act clearly bars workers' compensation benefits under such circumstances." *Id.* at 1067.

¶ 24 In *Pickett v. Industrial Comm'n*, 252 Ill. App. 3d 355 (1993), this court considered an application for benefits for injuries a claimant received while playing in a basketball game as a member of the employer's team. This court concluded that the Commission's determination that claimant's injuries occurred in the course of his employment was against the manifest weight of the evidence. *Id.* In so ruling, we noted that "the pivotal issue which determines whether the activity is within the coverage of the Act is whether the employee is ordered or assigned to participate in the activity, since this is the only exception to section 11 exclusion from coverage." *Id.* at 358. This court reversed the Commission's decision in that case where:

"there was not a scintilla of evidence that claimant's participation on the team was anything other than voluntary. *** Claimant did not organize the team or the league. He was never asked by his supervisor to participate on the team, was never told he had to play, and was not advised that he would suffer some work-related detriment if he failed to play on the team. In short, the only evidence in this record is that respondent organized a basketball team and claimant voluntarily chose to be a part of that team. There is nothing to suggest that respondent did anything other than make the recreational activity available to employees who wish to participate." *Id.* at 358-59.

¶ 25 Finally, we note this court's decision in *Woodrum v. Indus. Comm'n*, 336 Ill. App. 3d 561, 562 (2003), where we considered a claim under the Act alleging that an employee sustained a compensable injury to his right knee while playing basketball at a company picnic. There, this court concluded that the injury was compensable because the situation at hand involved a company picnic and "[t]he Act specifically lists a picnic as a 'program' covered by section 11." *Id.* at 563-64. As such, the court did not need to "focus[] upon the nature of claimant's participation in the basketball game while at the picnic." *Id.* Rather, this court framed the issue as follows:

“The pivotal issue which determines whether a recreational activity, such as the picnic in the instant matter, is within the coverage of the Act is whether the employee is ‘ordered or assigned’ to participate in the activity. [Citation.] If claimant was ‘ordered or assigned’ to attend the picnic, injuries incurred while at the picnic are said to arise out of claimant's employment. Conversely, if he was not so ordered or assigned to attend the picnic, injuries incurred while at the picnic do not arise out of claimant’s employment.” *Id.* at 564.

Ultimately, the *Woodrum* court concluded that “where an employee must choose between forgoing pay or benefits and attending a company sponsored recreational program, the employee is, as a matter of law, assigned to attend the function. Any injuries incurred while at the function will be said to arise out of and in the course of employment.” *Id.* at 562-63.

¶ 26 Considering the language of the Act and these prior decisions of this court, we make the following initial observations. This court has clearly concluded that where a claimant is actively participating in a recreational athletic event, such as in *Calumet*, *Elmhurst*, and *Pickett*, that claimant will be found to be “participating” in a recreational program under section 11. Additionally, as we concluded in *Gooden* and *Woodrum*, because a picnic is specifically listed as a recreational program in section 11, a claimant’s mere attendance at such a picnic alone will constitute “participating” in a recreational program under section 11. Any further or additional participation in any specific recreational activities at such an event is not required or relevant to the analysis. In all cases, “the pivotal issue which determines whether the activity is within the coverage of the Act is whether the employee is ordered or assigned to participate in the activity, since this is the only exception to section 11 exclusion from coverage.” *Pickett*, 252 Ill. App. 3d at 358.

¶ 27 Applying the language of the statute and the above caselaw to the facts of this case present several challenges. Specifically, it is clear from the evidence presented below that the BOOjay Buzz was an event that contained both a non-recreational component—the business meeting that was similar to the other similar events that were held throughout the year—and a recreational component—the once-a-year Halloween costume contest. It is also clear that while *attendance* at the entirety of the BOOjay Buzz event was mandatory, any further *participation* in the costume contest portion of the event was completely voluntary. Furthermore, and to the extent it is even relevant, it is also clear that claimant was injured not simply during her mere attendance at the event, but during her active participation in the costume contest.

¶ 28 Ultimately, we conclude that the language of section 11 does not explicitly account for situations such as the one presented here, the proper application of the statutory language to this matter is not entirely clear, and that therefore the language of section 11 is ambiguous. *Young v. Wieland*, 2020 IL App (2d) 191042, ¶ 26 (“if a statute is capable of being understood by reasonably well-informed persons in two or more different ways, the statute will be deemed ambiguous.”). This ambiguity itself raises several competing interests in interpreting and applying section 11 to this matter.

¶ 29 For example, we initially note that “if the meaning of an enactment is unclear from the statutory language itself, the court may look beyond the language employed and consider the purpose behind the law and the evils the law was designed to remedy.” *Gruszczyka v. Illinois Workers’ Compensation Comm’n*, 2013 IL 114212, ¶ 12. “The main purpose of the Act is to provide financial protection for injured workers, and its provisions must be interpreted liberally to effectuate that purpose.” *Illinois State Treasurer v. Illinois Workers’ Comp. Comm’n*, 2015 IL

117418, ¶ 41. This guidance would call for a liberal interpretation of section 11 favorable to claimant, so as to effectuate the main purpose of the Act.

¶ 30 However, we also note that a “statute should be read as a whole and construed so as to give effect to every word, clause, and sentence; we must not read a statute so as to render any part superfluous or meaningless. [Citation.] Words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation.” *Palm v. Holocker*, 2018 IL 123152, ¶ 21. Under this guidance, any liberal construction of the Act in favor of claimant must be tempered by the requirement to give effect to both the exclusion and exception contained in section 11.

¶ 31 Finally, it is also true that “courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with the administration and enforcement of the statute. Such an interpretation expresses an informed source for ascertaining the legislative intent. A significant reason for this deference is that agencies can make informed judgments upon the issues, based on their experience and expertise.” *Abrahamson v. Illinois Dept. of Prof’l Regulation*, 153 Ill. 2d 76, 97-98 (1992); *Freeman United Coal Mining Co. v. Indus. Comm’n*, 317 Ill. App. 3d 497, 503 (2000); *King v. Illinois Indus. Comm’n*, 301 Ill. App. 3d 958, 962 (1998). Thus, a “court will not substitute its own construction of a statutory provision for a reasonable interpretation adopted by the agency charged with the statute’s administration.” *Illinois Bell Telephone Co. v. Illinois Commerce Comm’n*, 362 Ill. App. 3d 652, 657 (2005). Obviously, this guidance would call on us to give substantial weight and deference to the Commission’s interpretation of section 11 in this matter.

¶ 32 Ultimately, and with an eye to the specific facts of this case, the language and purpose of the statute, and the caselaw and interpretive aids discussed above, we conclude that the

Commission’s interpretation of section 11 was in fact reasonable, and we find no reason to disturb that interpretation. We also find that its conclusion that claimant “was involved in a voluntary recreational activity at the time of the alleged accident and that benefits were appropriately denied pursuant to Section 11 of the Act” was not against the manifest weight of the evidence.

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court which confirmed the decision of the Commission.

¶ 34 Affirmed.

¶ 35 JUSTICE BARBERIS, dissenting:

¶ 36 The majority affirms a decision that cannot be reconciled with the statutory text, the record, and this court’s prior decision in *Woodrum v. Indus. Comm’n*, 336 Ill. App. 3d 561 (2003). I respectfully dissent.

¶ 37 Section 11 of the Act excludes injuries sustained while participating in voluntary recreational programs unless the employee was “ordered or assigned” to participate in the program. 820 ILCS 305/11 (West 2022). It does not, however, exclude injuries occurring during recreational activities embedded within an employer-mandated event.

¶ 38 *Woodrum* illustrates why the voluntary nature of the particular recreational activity does not end the inquiry. There, the claimant was injured while voluntarily playing basketball during a company-sponsored picnic held on the employer’s premises during a regular workday. *Woodrum*, 336 Ill. App. 3d at 563. Attendance at the picnic was mandatory for the claimant, and the employer provided several recreational activities, including basketball. *Id.* The claimant was injured while playing basketball, and the appellate court held that the injury was compensable. *Id.* at 565. *Woodrum* held that “where an employee must choose between forgoing pay or benefits and attending a company sponsored recreational program, the employee is, as a matter of law, assigned

to attend the function. Any injuries incurred while at the function will be said to arise out of and in the course of employment.” *Id.* at 562-63.

¶ 39 This record fits *Woodrum*. The evidence, here, demonstrated that the University required employees to attend the BOOjay Buzz during work hours and while on the clock. Employees were required to remain until released by the President. The BOOjay Buzz was the Halloween version of the regular Bluejay Buzz, conveyed the same University business, and was conducted as one continuous employer-run program. During that gathering, President VanAken invited employees to participate in the individual costume contest. Claimant was injured while participating in that contest. The record therefore establishes mandatory attendance, a continuous employer-controlled event, and an injury during a recreational activity embedded within that event. Those circumstances bring the injury within *Woodrum*.

¶ 40 The majority divides the BOOjay Buzz into a mandatory meeting and a voluntary contest. However, the University did not conduct the event that way. The BOOjay Buzz was a single, continuous program, held on University premises during work hours, with employees required to remain until released. The President initiated the costume contest while employees remained assembled for the BOOjay Buzz. Thus, plaintiff did not leave a mandatory University event to participate in a separate recreational program; she participated in a recreational activity that occurred during the mandatory event. This is similar to *Woodrum*, where the claimant was injured while playing basketball—an activity provided by the employer at a company-sponsored picnic. Under *Woodrum*, the voluntary nature of that activity does not alter the mandatory nature of the event in which it occurred.

¶ 41 The Commission did not address whether attendance at the BOOjay Buzz itself was mandatory. Instead, it focused on plaintiff’s voluntary participation in the costume contest and

characterized the injury as occurring during a voluntary recreational program. That approach overlooks the evidence that the contest occurred as part of a mandatory, employer-controlled event.

¶ 42 Although we defer to the Commission's factual findings, that deference does not insulate a decision based on a legally flawed characterization of the evidence. A finding is against the manifest weight of the evidence when no rational trier of fact could agree with it and the opposite conclusion is clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 43 Here, the undisputed evidence establishes that attendance was mandatory, employees were on the clock, employees remained until released, and the costume contest occurred during the same employer-run gathering. Plaintiff's testimony and HR Director James Fitzgerald's testimony confirmed these facts, and the University's communications corroborated the continuous nature of the BOOjay Buzz.

¶ 44 The Commission's failure to address whether attendance at the BOOjay Buzz was mandatory, coupled with the evidence of employer control and continuity, renders its finding of noncompensability against the manifest weight of the evidence.

¶ 45 Under *Woodrum* and Section 11's ordered-or-assigned exception, the mandatory nature of the BOOjay Buzz controls the character of the recreational activity embedded within it. The undisputed evidence establishes mandatory attendance, continuous employer control, and an injury during a recreational component of that same employer-mandated event. The majority's division of the BOOjay Buzz into separate mandatory and voluntary activities is inconsistent with the record, *Woodrum*, and the Act. Therefore, I would reverse the judgment of the circuit court confirming the Commission's decision.