2021 IL App (3d) 200463WC-U
No. 3-20-0463WC
Order filed June 25, 2021

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PURDY BROTHERS TRUCKING, LLC,	)	Appeal from the Circuit Court
	)	of Bureau County.
Appellant,	)	
	)	
v.	)	No. 20-MR-46
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al*.	)	Honorable
	)	Marc P. Bernabei,
(Joel Maddy, Appellee).	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: (1) The Illinois Workers' Compensation Commission's finding that claimant sustained an accidental injury arising out of and occurring in the course of his employment with respondent was not against the manifest weight of the evidence; (2) the Illinois Workers' Compensation Commission's finding that claimant's condition of ill-being is causally related to his work accident was not against the manifest weight of the evidence; (3) the Illinois Workers' Compensation Commission's award of temporary total disability benefits was not against the manifest weight of the evidence; and (4) the Illinois Workers' Compensation Commission's award of prospective medical care was not against the manifest weight of the evidence.

¶ 2 Claimant, Joel Maddy, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2018)) seeking benefits for injuries he allegedly sustained to his left upper extremity while in the employ of respondent, Purdy Brothers Trucking, LLC. Following a hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2018)), the arbitrator found that claimant sustained an accidental injury arising out of and occurring in the course of his employment with respondent and that claimant's condition of ill-being was causally related to the accident. The arbitrator awarded claimant temporary total disability (TTD) benefits, reasonable and necessary medical expenses, and prospective medical care. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator. On judicial review, the circuit court of Bureau County confirmed the decision of the Commission. In this appeal, respondent challenges the Commission's findings with respect to accident, causation, TTD benefits, and prospective medical care. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2019, claimant filed an application for adjustment of claim alleging injuries to his left hand and wrist on June 6, 2018, while in the employ of respondent. Specifically, claimant alleged that the injuries occurred when he tripped and fell while unloading a truck. An arbitration hearing on claimant's application for adjustment of claim was held pursuant to section 19(b) of the Act (820 ILCS 320/19(b) (West 2018)) on August 6, 2019, before arbitrator Paul Seal. The issues in dispute included accident, causal connection, TTD benefits, medical expenses, and prospective medical care. The following factual recitation is taken from the evidence adduced at the arbitration hearing.

¶ 5 Claimant testified that he was hired by respondent in July 2017 and initially worked as a truck driver. In that capacity, claimant operated a semi-tractor trailer and delivered product within

a 150-mile radius of respondent's facility in Princeton, Illinois. Claimant subsequently transferred to a "spotter" position and was assigned to a food-processing plant in Amboy, Illinois operated by a third party, Sensient. Claimant explained that a spotter uses a "spotter truck" to position tractor trailers in the docks of a manufacturing plant. At Sensient, this involved moving trailers containing product to different docks depending on where the Sensient employees were working at the time.

¶ 6 Claimant testified that he was not provided any training by respondent on either his duties as a spotter or the use of any equipment involved in the position. Moreover, respondent did not show claimant any training videos on how to be a spotter or provide claimant with "any manuals with directions for what a spotter does or doesn't do." Claimant testified that the only guidance he received from respondent regarding his job responsibilities was from his manager, who instructed him "to do as Larry Beck did." Beck was also employed as a spotter by respondent and assigned to the Sensient facility.

¶ 7 Claimant testified that if he were "a pure 100 percent spotter," he would "stay in the cab" of the spotter truck for his entire shift. Claimant testified, however, that while working as a truck driver prior to his employment for respondent, he observed spotters parking trailers in docks and then going inside to load and unload trailers at various locations. Further, claimant observed individuals employed by respondent as spotters for Sensient engaged in activities "other than purely spotting." For instance, claimant observed Beck do "various things," including fueling refrigerated trailers and repairing Sensient's equipment and dock doors. He also observed Mark Cotter, another spotter, replace air lines on tractors.

¶ 8 In addition, claimant testified to instances when he performed activities outside the realm of "purely spotting." Claimant recalled that on one occasion, while backing a trailer into the dock, the trailer door fell off. Claimant was directed by a Sensient employee to pick up the door and

move it out of the way. Further, claimant described an instance where a seal on the engine of the spotter truck broke and sprayed oil on the road near the dock. Claimant was directed to clean up the oil spill. In addition, claimant was directed by Sensient employees to climb into and look through various trailers to find specific products that they needed. Claimant also recounted that he wanted to paint lines on the road near the docks to make it easier to back in the trailers. Claimant asked Beck whether that would be allowed, and Beck told claimant to "just do it." Beck even recommended that claimant paint lines on the walls near the docks to make it easier to back in the trailers. Claimant painted the lines and Sensient never objected. Based on what he was told to do, claimant believed that these activities were part of his responsibilities as a spotter. Moreover, in claimant's opinion, engaging in these activities helped the business relationship between respondent and Sensient because it allowed the spotters to position the trailers in the docks more quickly.

¶ 9 Claimant testified that his accident occurred on June 6, 2018, at about 11:30 p.m., a half hour before the end of his shift. Claimant was instructed by James Strenge, a Sensient employee, to get a trailer containing barrels that were used to ship Sensient's products. The barrels, which were made of cardboard, were about four feet high and weighed about two pounds when empty. Claimant drove the spotter truck and the trailer filled with the barrels to the dock. Claimant then entered the dock area using a key fob. Strenge told claimant that he needed 10 barrels. Claimant responded, "Well, let's get them off [the trailer]." Claimant grabbed one of the barrels and walked it to the back of the trailer to place it on a pallet for transport to the production area. While moving the barrel, claimant tripped on a strap that was used to secure the barrels in the trailer. Claimant fell to the ground, hitting his left knee and left wrist. Claimant testified that after the accident his wrist became very painful with movement. At the end of claimant's shift, he went home to ice his

knee and wrist.

¶ 10 The following day, claimant presented for treatment to St. Mary's Hospital with complaints of left wrist pain and left knee pain. An X ray of the left wrist was negative for a fracture, dislocation, or bone destruction. An X ray of the left knee revealed mild degenerative changes of the medial joint compartment, but was otherwise unremarkable. Claimant was diagnosed with left wrist pain, left knee pain, and infrapatellar bursitis of the left knee. He was given work restrictions, a brace for his wrist, and a prescription for naproxen.

¶ 11 Claimant's left knee symptoms resolved within six weeks, but he continued to experience left wrist pain. Claimant subsequently underwent chiropractic treatment his for wrist with only modest improvement. Claimant was referred for an electromyography (EMG) of the left wrist. The EMG came back normal, so claimant underwent an MRI of the left wrist. The MRI was interpreted as showing a complex tear of triangular fibrocartilage and a small synovial or ganglion cyst along the medial margin of the ulnocarpal joint. Claimant was referred to a hand surgeon, Dr. James Williams. Dr. Williams's initial diagnosis was wrist joint pain. He recommended a cortisone injection and physical therapy. Claimant did not experience any significant improvement with conservative treatment, so Dr. Williams recommended surgery to repair the tear. Claimant testified that he continues to experience pain in the left wrist with use and that he would like to undergo the surgery recommended by Dr. Williams.

¶ 12 On cross-examination, claimant acknowledged that at the time of the injury, he was taking direction from someone who worked for Sensient, he was utilizing Sensient's spotter truck, and he was injured in a trailer that was not owned by respondent. On redirect examination, claimant testified that the date of his injury was not the first time that he had helped unload trailers at Sensient.

¶ 13 Respondent called Rollen Copeland as a witness. Copeland has been employed by respondent since 1996. At the time of the arbitration hearing, Copeland was working as the terminal manager of respondent's Princeton facility. Prior to becoming terminal manager, Copeland worked for respondent as a dispatcher, human resources representative, safety department employee, and customer service representative. Sensient was one of Copeland's accounts as a dispatcher and a customer service representative. Copeland testified that respondent had been providing spotters to Sensient since before 1996. Sensient was the only customer to whom respondent provided spotters. Copeland testified that a spotter's principal responsibility is to move trailers into and out of the docking area. Occasionally, a spotter would also return a broken trailer to respondent's terminal. Copeland testified that respondent did not want its spotters to load or unload trailers. This policy arose after several incidents in the 1990s when spotters were injured while engaging in such activities. Copeland testified that this is a nationwide policy and employees are instructed about it during orientation. The only exception to this policy is if the customer pays to have an employee load and unload, which he referred to as a "lumping service." Copeland testified that Sensient did not contract for the lumping service. Copeland also testified that respondent's employees should not have been repairing or maintaining equipment or facilities owned by its customers.

¶ 14 On cross-examination, Copeland admitted that respondent did not have an employee manual that covers the specific job responsibilities of a spotter or contains a job description for the spotter position. Copeland also admitted that respondent did not have a video for spotters to watch that describes the duties of the position. Copeland stated that respondent's employees undergo an orientation in Tennessee, but he could not verify if the responsibilities of a spotter are discussed at the training. Copeland also acknowledged that respondent does not provide its employees with any

"written direction" specifying that a spotter must "do 100 percent spotting and that's it." Copeland acknowledged that Beck performed responsibilities "beyond just spotting." He stated, however, that "[t]he only other thing, Larry Beck did [was] fuel trailers occasionally." Copeland could not say with certainty that, prior to claimant's injuries, none of respondent's employees helped unload trailers at Sensient.

¶ 15 Copeland further testified on cross-examination that as the manager of the terminal in Princeton, he spends most of his time at that facility. He stated, however, that he visits other facilities two or three times a year. Copeland estimated that he had been to the Sensient facility 3 times in the 5-year period preceding his testimony and that the last time he observed spotters working at the Sensient facility was 2½ years prior to the date of his testimony.

¶ 16 Based on the foregoing evidence, the arbitrator concluded that claimant sustained an accidental injury arising out of and occurring in the course of his employment with respondent. In support of this finding, the arbitrator reasoned as follows:

> "Here, the [claimant] established that he was given very little instruction on what his job responsibilities were or how to perform his responsibilities as a spotter. Indeed, even the Respondent's witness, Mr. Copeland, admitted that there was no written job description, written directions on how to do the job, nor could Mr. Copeland state that the [claimant's] job duties were discussed at the training the Respondent provided in Tennessee.
>
> The [claimant] testified that he was told to simply follow the direction of his co-worker, Larry Beck. The [claimant] testified that he saw other employees of Respondent doing much more than simply moving trailers at the Sensient facility. There has been no evidence provided that the [claimant] was told not to help remove the loads from the trailers

he was moving.

At the time the [claimant] was allegedly injured he was not doing anything that could be deemed unreasonable or unusual. Indeed, the assistance in removing loads from the trailers was a service that the Respondent provided, which they called 'lumping.' Even though the evidence presented shows that Sensient did not purchase the Respondent's 'lumping' services, there is no evidence that the [claimant] was told not to assist in removing the loads from the trailers at the Sensient facility. The [claimant] reasonably believed that he was benefitting his employer by assisting Sensient in removing the loads faster so the production line would not be disrupted.

Stated another way, the Respondent acquiesced to the [claimant's] actions of helping remove the loads from the trailer because the Respondent never told him not to do so, and the act that the [claimant] was performing was reasonably believed to be part of his job and for the benefit of his employer."

¶ 17 The arbitrator also concluded that claimant's condition of ill-being was causally related to the work accident of June 6, 2018. In this regard, the arbitrator noted that claimant testified that he tripped and fell while performing what he reasonably believed to be his job duties, thereby injuring his wrist and knee. The arbitrator further concluded that the medical records support a finding of causation, noting that no testimony was provided to the contrary. Finally, the arbitrator concluded that the medical services provided to claimant were reasonable and necessary, ordered respondent to authorize the surgery recommended by Dr. Williams, and awarded claimant 14-4/7 weeks of TTD benefits.

¶ 18 The Commission affirmed and adopted the decision of the arbitrator and remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

On judicial review, the circuit court of Bureau County confirmed the decision of the Commission and remanded the matter to the Commission for further proceedings in accordance with the Commission's decision. This appeal by respondent ensued.

¶ 19 II. ANALYSIS

¶ 20 On appeal, respondent challenges the Commission's findings with respect to accident, causation, TTD benefits, and prospective medical care. Because respondent's arguments focus on the assertion that claimant failed to prove that he sustained an accident that arose out of and occurred in the course of his employment with respondent, we address that topic first.

¶ 21 A. Accident

¶ 22 Respondent argues that the Commission's finding that claimant's injuries arose out of and occurred in the course of his employment as a spotter was against the manifest weight of the evidence because claimant was voluntarily performing activities he knew were outside the scope of his duties when he was injured. As such, respondent argues that the Commission's finding that claimant sustained a work-related accident should be reversed. Claimant responds that the Commission reached the proper result because he was injured in a location where he believed he had permission to be and he was engaged in an activity he reasonably believed was a part of his employment with respondent.

¶ 23 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 2018); *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.

¶ 24 Typically, the question of whether an employee's injury arose out of and occurred in the course 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. With these principles in mind, we initially address the "arising out of" component of the inquiry.

¶ 25 1. Arising Out of Employment

¶ 26 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). 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; *Purcell v. Illinois Workers' Compensation Comm'n*, 2021 IL App (4th) 200359WC, ¶ 18. 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. 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).

¶ 27 Employment risks are those that are inherent in one's employment. *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352 (2000) (Rakowski, J., specially concurring). Employment risks include the obvious kinds of industrial injuries and occupational diseases. *McAllister*, 2020 IL 124848, ¶ 40; *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162; *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 352 (Rakowski, J., specially concurring). "Examples of employment-related risks include 'tripping on a defect at the employer's premises, falling on uneven or slippery ground at the work site, or performing some work-related task which contributes to the risk of falling.' " *McAllister*, 2020 IL 124848, ¶ 40 (quoting *First Cash Financial Services*, 367 Ill. App. 3d at 106). Injuries resulting from a risk distinctly associated with employment are deemed to arise out of one's employment and are compensable under the Act. *McAllister*, 2020 IL 124848, ¶ 40.

¶ 28 Personal risks include nonoccupational diseases, personal defects or weaknesses, 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. For instance, a fall due to a bad knee or a fall due to an episode of dizziness would come within the personal-risk category. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162-63; *Illinois Consolidated Telephone Co*, 314 Ill. App. 3d at 352-53 (Rakowski, J., specially concurring). 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.

¶ 29 Neutral risks have no particular employment or personal characteristics. *Illinois Consolidated Telephone Co.*, 314 Ill. App. 3d at 353 (Rakowski, J., specially concurring). Examples of neutral risks include stray bullets, dog bites, lunatic attacks, lightning strikes, bombings, hurricanes, and falls on level ground or while traversing stairs. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 163; *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.

¶ 30 Having set forth the three categories of risk to which an employee may be exposed, we consider whether claimant's injury arose out of an employment-related risk. A risk is distinctly

associated with one's employment if, at the time of the occurrence, the employee was performing (1) acts 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. In this case, the Commission, in affirming and adopting the decision of the arbitrator, determined that claimant's injury arose out of an employment-related risk based on the third prong, reasoning that "the act that the [claimant] was performing [at the time of the injury] was reasonably believed to be part of his job and for the benefit of his employer." Based on our review of the record, we cannot say that a conclusion opposite that of the Commission is clearly apparent.

¶ 31 In this regard, although claimant testified as to his understanding of the general duties of a spotter, *i.e.*, positioning tractor trailers in the docks of a manufacturing plant, he also recounted that respondent did not train him on his specific duties as a spotter or the use of any equipment involved in the position. Moreover, respondent did not furnish any training manuals or show any training videos on how to be a spotter. Copeland, respondent's witness, confirmed that respondent does not have a written job description for the spotter position, it does not provide employees with a manual or a video describing the responsibilities of a spotter, and it does not have any "written direction" specifying that a spotter must "do 100 percent spotting and that's it." Further, Copeland could not verify that the responsibilities of a spotter are discussed at the orientation respondent's employees attend. Additionally, claimant testified that the only guidance he received from respondent regarding his job responsibilities was from his manager, who instructed him "to do as Larry Beck did." Beck was also employed as a spotter by respondent and assigned to the Sensient facility. Claimant observed Beck engage in activities other than "purely spotting," including

fueling refrigerated trailers and repairing Sensient's equipment and dock doors. Claimant also observed Cotter, another spotter, replace air lines on tractors. Moreover, claimant testified that while working as a truck driver prior to his employment for respondent, he routinely observed spotters loading and unloading trailers. Further, based on Copeland's testimony as to how infrequently he left the Princeton facility to visit other worksites, it does not appear that the spotters at the Sensient facility were regularly overseen by any of respondent's managers or supervisors. Thus, the record establishes that respondent provided not only negligible instruction regarding the scope of a spotter's duties at the Sensient facility, but little, if any, supervision. The only guidance claimant received from respondent regarding his job responsibilities was to follow the lead of Beck. Beck engaged in activities other than "purely spotting" and claimant testified that he had observed spotters at other facilities load and unload trailers when he worked as a truck driver. Considering the evidence in its entirety, the Commission could reasonably conclude that at the time of the injury claimant was engaged in an act he might reasonably be expected to perform incident to his duties as a spotter.

¶ 32 In so holding, we are mindful that there was conflicting testimony regarding whether respondent expressly prohibited claimant from loading and unloading trailers. Claimant testified that he was told to simply follow the lead of Beck. And while there was no evidence that Beck loaded and unloaded trailers, there was testimony that he engaged in activities other than "purely spotting" as did Cotter, another spotter at the Sensient facility. In contrast, Copeland testified that respondent established a policy in the 1990s prohibiting spotters from loading and unloading trailers unless a customer contracts for respondent's "lumping service." Copeland further testified that spotters are instructed about this policy during orientation. It is the function of the Commission to resolve conflicts in the evidence and draw reasonable inferences therefrom. *Hosteny*, 397 Ill.

App. at 674. Here, the Commission, in affirming and adopting the decision of the arbitrator, determined that there was no evidence that claimant was told that he was prohibited from unloading trailers at the Sensient facility. The Commission's finding was a reasonable one given the conflicting evidence. Indeed, we observe that there was no evidence that Copeland was present at the orientation session where claimant was supposed to have been instructed about the policy. More significantly, given the dearth of instruction respondent provided its workforce about the job responsibilities of a spotter, as well as the lack of supervision, and considering claimant's testimony that Beck and respondent's other spotters engaged in various activities other than "purely spotting" at the Sensient facility, the Commission could reasonably infer that, contrary to Copeland's testimony, the policy was not disseminated to respondent's employees.

¶ 33 Respondent presents various reasons why it believes the Commission's decision was against the manifest weight of the evidence. In support of these arguments, respondent directs us to various cases. We address these claims *seriatim*.

¶ 34 First, respondent posits that claimant was not injured while performing his job duties as a spotter but by "volunteering to perform duties for Sensient that [respondent] prohibited." According to respondent, claimant's testimony establishes that he engaged in "a pattern of *** volunteering to perform actions outside his employment without [respondent's] knowledge." In support of this claim, respondent directs us to *George S. Mepham & Co. v. Industrial Comm'n*, 289 Ill. 484 (1919).

¶ 35 In *George S. Mepham & Co.*, the employee worked in a paint factory, operating paint mixers driven by belts. The employer hired millwrights to keep the belts in working condition and there was testimony that the other workers were not supposed to work on the belts unless told to do so by their foreman. On the day of the injury, one of the belts broke. A millwright repaired the

belt. Thereafter, the foreman asked two other workers to assist him in putting the belt back on a pulley. The men got the belt on the pulley. However, there was a "half-turn" in the belt, so it had to be taken off. The employee observed the men having difficulty pushing the belt off the pulley, so he took a pipe out of one of the worker's hands and attempted to remove the belt. When the foreman saw what the employee was about to do, he shouted, "Don't do that." However, the employee had gone too far. The belt jerked the pipe into the pulley and threw the employee to the floor. The employee's skull was crushed in the incident, and he eventually died. The Commission awarded benefits to the employee's widow. After the circuit court set aside the Commission's award, the employee's widow appealed to the supreme court. The supreme court observed that an injury to an employee "while engaged in a voluntary act not accepted by or known to the employer and outside the duties for which he is employed cannot be said to arise out of [the] employment." *George S. Mepham & Co.*, 289 Ill. at 488. The supreme court held that the employee's injury was not compensable because he volunteered his services where he was neither required nor expected to assist in adjusting the belt, there was no emergency, and the condition of the belt at issue did not affect the part of the work which the employee was hired to do. *George S. Mepham & Co.*, 289 Ill. at 489.

¶ 36 Respondent argues that *George S. Mepham & Co.* is directly on point in that like the employee in that case, claimant "made himself a volunteer when he suggested that he deviate from his known job duties and help unload a truck." However, we find *George S. Mepham Co.* distinguishable from the case at hand for two principal reasons. First, in *George S. Mepham Co.* there was undisputed testimony that (1) the employee was not supposed to work on the belts unless instructed to do so by his foreman and (2) the foreman had not requested the employee's help. Here, in contrast, there was conflicting testimony regarding whether respondent's alleged policy

prohibiting spotters from unloading trailers was disseminated to claimant and its other workers. The Commission resolved this conflict in claimant's favor, as was its province, and determined that there was no evidence that respondent instructed claimant that he was prohibited from unloading trailers. Second, we reject the notion that claimant "made himself a volunteer" and "deviate[d] from his known job duties" to help unload a truck. A deviation for purely personal reasons renders an accident non-compensable. *Checker Taxi Cab Co. v. Industrial Comm'n*, 45 Ill. 2d 4, 6-7 (1970). We find no such deviation here, however. The evidence shows that respondent's spotters at the Sensient facility routinely engaged in activities outside the realm of "purely spotting." Hence, claimant cannot be said to have been engaged in a deviation from his known job duties at the time of his injury. Given these distinctions, respondent's reliance on *George S. Mepham Co.* is misplaced.

¶ 37 Respondent also claims that the Commission focused on claimant's "alleged lack of training, but failed to notice the obvious fact that [claimant] clearly new [*sic*] what his job duties were." Respondent's claim simply has no basis in the record. First, claimant's lack of training was significant and well documented. Even Copeland, respondent's witness, acknowledged that respondent does not have a written job description for the spotter position, respondent does not provide employees with a manual or a video describing the responsibilities of a spotter, and respondent does not have any "written direction" specifying that a spotter must "do 100 percent spotting and that's it." Moreover, Copeland could not verify that the responsibilities of a spotter are discussed at the orientation sessions held for respondent's employees. Second, while the record establishes that claimant had a general understanding of what a spotter does, the Commission pointed out that the only guidance provided by respondent regarding his specific responsibilities

was to "do as Beck does." And, as we discussed previously, Beck engaged in activities other than "purely spotting" as did the other spotter assigned to the Sensient facility.

¶ 38 Respondent acknowledges that Beck refueled trailers, but asserts that Beck had permission to do so. In contrast, respondent asserts, it did not give claimant permission to load or unload trailers and claimant never testified that he saw Beck engage in such activities. This ignores claimant's testimony that he observed Beck engaged in non-spotting activities other than refueling trailers. For instance, claimant testified that Beck repaired Sensient's equipment and doors. Claimant also testified that Cotter, another spotter for respondent, replaced air lines on tractors. These activities were clearly outside the sphere of "purely spotting," and there was no evidence that respondent either authorized or prohibited its spotters to engage in such activities. Given the variety of activities in which respondent's spotters engaged outside of positioning trailers in the docks, the Commission could reasonably conclude that claimant was engaged in an act he might reasonably be expected to perform incident to his duties as a spotter.

¶ 39 Respondent next asserts that there is no evidence that it acquiesced in claimant's behavior or was aware that he was performing activities outside the duties of a spotter. We find respondent's position disingenuous given the lack of guidance provided to claimant regarding the scope of his responsibilities as a spotter. Essentially, respondent left claimant to figure out exactly what he was supposed to be doing by observing the other spotters at Sensient. The evidence also establishes that respondent provided little to no supervision of the spotters at the Sensient facility in Amboy. We observe, for instance, that Copeland, respondent's only witness, testified that he spent most of his time at respondent's property in Princeton, visiting other facilities only two or three times a year. Further, Copeland estimated that he had been to the Sensient facility only 3 times in the 5-year period preceding his testimony and that the last time he observed spotters working at the

Sensient facility was 2½ years prior to the date of his testimony. Respondent presented no other evidence regarding the frequency with which its managers or supervisors observed the spotters at Sensient. In light of the lack of instruction and supervision provided by respondent to the spotters at Sensient, this argument is not well taken.

¶ 40 Respondent notes that the Commission found that claimant "reasonably believed that his actions would benefit [respondent]." According to respondent, however, the supreme court has held that "if [an employee], when there is no emergency, should of his own volition see fit to intermeddle with something entirely outside the work for which he is employed, he ought not to be allowed compensation upon the mere plea that he thought his act would be for the benefit of his employer." *Eugene Dietzen Co. v. Industrial Board of Illinois*, 279 Ill. 11, 22 (1917). Respondent's reliance on *Eugene Dietzen Co.* is misplaced for two principal reasons.

¶ 41 First, *Eugene Dietzen Co.* is factually distinguishable from the present case. In *Eugene Dietzen Co.*, the employee was hired to polish metal pieces and place the polished pieces into a box. Beneath the box was a receptacle into which dust from the work fell. Under the receptacle was an exhaust system that was completely enclosed. The exhaust system was separate from the polishing machine. There was testimony that the employee had been instructed not to attempt to remove the cover of the exhaust system and reach into it, and that, on a previous occasion when the employee had taken off the cover of the exhaust system and started to reach into it, he had been told specifically not to do so. The employee, however, denied receiving such orders. The employee injured his right hand when he removed the cover of the exhaust system and reached in to retrieve a metal piece that had fallen into the exhaust system. The Industrial Board found that the weight of the testimony showed that the employee had been forbidden to reach into the exhaust system to

recover articles that had been dropped. Nevertheless, the Industrial Board awarded the employee benefits and the circuit court confirmed.

¶ 42 On appeal, the supreme court reversed, concluding that the employee's act in opening the exhaust system to retrieve the item "had no *** reasonable connection with his work as to justify him in the conclusion that it was his duty to take off this cover and attempt to recover the article." *Eugene Dietzen Co.*, 279 Ill. at 21. In support of this conclusion, the supreme court determined that "the work of polishing was clearly different from the act of putting his hand into the [exhaust system] to *** remove an article from it" and noted the Industrial Board's finding that the employee had been forbidden to reach into the exhaust system. *Eugene Dietzen Co.*, 279 Ill. at 20-22. *Eugene Dietzen Co.* is clearly distinguishable from the case at hand because the Industrial Board found that the employee had been expressly instructed not to take off the cover of the exhaust system. Here in contrast, the Commission found that claimant had not been told that he was prohibited from helping Sensient employees unload trailers.

¶ 43 The second reason respondent's reliance on *Eugene Dietzen Co.* is misplaced is because the language respondent cites from *Eugene Dietzen Co.* is not directly from our supreme court as respondent represents. Rather, it is language cited by the supreme court from a Michigan case, *Bischoff v. American Car & Foundry Co.*, 157 N.W. 34, 36 (Mich. 1916). Moreover, our review of the *Eugene Dietzen Co.* case does not indicate that the employee's theory of recovery was premised on the fact that his decision to retrieve the item he dropped was motivated by his belief that this act would benefit his employer. Indeed, the court clearly premised its decision on the fact that "the work of polishing was clearly different from the act of putting his hand into the [exhaust system] to clean it out or remove an article from it" especially given the Industrial Board's finding that the weight of the testimony showed that the employee had been forbidden to reach into the

exhaust system to recover the dropped item. *Eugene Dietzen Co.*, 279 Ill. at 22. Thus, contrary to what respondent represents, it was not improper for the Commission to rely on the employee's testimony that he reasonably believed that his actions would benefit respondent. To the extent the language cited by respondent has any precedential value, it signifies that where the employer instructed the employee not to engage in a specified activity and the employee did so anyway, the mere fact that the employee's conduct in some way benefited the employer will not, by itself, mandate compensation.

¶ 44 Respondent also directs us to *Kensington Steel Corp. v. Industrial Comm'n*, 385 Ill. 504 (1944). According to respondent, *Kensington Steel Corp.* stands for the proposition that compensation should be denied where an employee voluntarily engages in duties beyond his or her assigned position even if the employer does not expressly forbid the employee from engaging in such activities. We find *Kensington Steel Corp.* is also distinguishable from the case at hand.

¶ 45 In *Kensington Steel Corp.*, the employee was hired by the employer as a millwright helper. A millwright helper was an assistant to the millwright in the repair of machinery in case of breakdown. About a week before the employee was injured, one of the employer's truck drivers approached the employee about swapping his position as a truck driver for that of a millwright helper. After receiving permission from their superiors to exchange their positions, the employee became a truck driver for the employer. While on a break from driving, the employee approached a stove to get warm when he heard one of the employer's machines make a "clunking noise." The employee was injured when he stuck his hand in the machine in an attempt to repair it. At the hearing on his claim, the employee testified that, as a millwright helper, he had worked on several machines at the employer's facility. He admitted, however, that he had not repaired any of the machines without the assistance of the millwright, who was responsible for the repairs. The

employee also acknowledged that, as a truck driver, his work was of such a nature that he had nothing to do with the repair of machines. The employer's master mechanic testified that when the employee worked as a millwright helper, he was under the supervision of a millwright or machinist and only did what he was told. Similarly, the night-shift foreman testified that when he worked with the employee, he instructed the employee regarding what to do and the employee did not do anything without his instructions. The night-shift foreman admitted, however, that a millwright helper did do certain tasks without the millwright and that he had not instructed the employee where the line was drawn as to what he could and could not do. The Commission awarded the employee benefits, and the trial court confirmed.

¶ 46 On appeal, the employer urged the supreme court to reverse the award of benefits on the basis that, without authority and against general orders and custom, the employee was injured performing a task that was outside the sphere of his position as a truck driver. The supreme court agreed and reversed the award of benefits. *Kensington Steel Corp.*, 385 Ill. at 514. Relying principally upon *Eugene Dietzen Co.* and *George S. Mepham Co.*, the court reasoned that "[t]here appears to have been no customary interchange of work by the employees of the department in which [the employee] was employed." *Kensington Steel Corp.*, 385 Ill. at 514.

¶ 47 Respondent asserts that the supreme court in *Kensington Steel Corp.* "did not require that the employee be directly told not to repair the machine on its [*sic*] own, but rather that the employee voluntarily went beyond his duties as a millwright's helper." Respondent therefore reasons that the Commission in this case "erred in holding that there is a pre-requisite that a volunteering employee must be directly told not to do the action resulting in the injury for the injury to be non-compensable." However, respondent misreads the *Kensington Steel Corp.* decision. Contrary to respondent's assertion, the supreme court indicated that the employee had been instructed not to

repair the machine on his own. First, the employee admitted that, as a truck driver, he had nothing to do with the repair of machines and that, as a millwright helper, he had not repaired any of the machines without the assistance of the millwright. Second, in the course of its decision, the supreme court stated, "It is clear that the [employee] knew from his past experience that if a machine was in need of repair, the millwright was to be notified and, according to past practice, the millwright helper would help [the millwright] make the repair." *Kensington Steel Corp.*, 385 Ill. at 509. Thus, the record in *Kensington Steel Corp.* did support the notion that the employee was aware that he was forbidden from repairing machines without the express consent of the millwright. In this case, the Commission reached the opposite conclusion. That is, the Commission determined that there was no evidence that claimant was told by respondent that he was prohibited from unloading trailers—the action in which he was engaged at the time of the injury. As noted previously, the Commission's conclusion was a reasonable one based on the evidence of record. Given this distinction, respondent's reliance on *Kensington Steel Corp.* is misplaced.

¶ 48 2. In the Course of Employment

¶ 49 As noted previously, it is not enough that an employee's injury "arise out of" the employment. *McAllister*, 2020 IL 124848, ¶ 32; *First Cash Financial Services*, 367 Ill. App. 3d at 105. It must also occur "in the course of" the employment. *McAllister*, 2020 IL 124848, ¶ 32; *First Cash Financial Services*, 367 Ill. App. 3d at 105. The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute*, 314 Ill. App. 3d at 162. Injuries sustained on an employer's premises, or at a place where the claimant might reasonably have been while performing his work duties, or within a reasonable time before and after work, are generally deemed to have been in the course of the employment. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57; *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142 (1973). In this case,

claimant was not injured on respondent's premises. However, the occurrence happened at a place where claimant might reasonably have been while performing his work duties, *i.e.*, his assigned work location at Sensient, during his work hours, and while performing activities he might reasonably be expected to perform incident to his duties as a spotter. Therefore, we conclude that claimant was injured in the course of his employment.

¶ 50 In short, for the reasons set forth above, we conclude that the evidence in this case support the Commission's finding that claimant's fall and resulting injury arose out of and occurred in the course of his employment with respondent and that the Commission's holding in this regard is not against the manifest weight of the evidence.

¶ 51 B. Remaining Issues

¶ 52 Respondent also challenges the Commission's findings with respect to causation, TTD benefits, and prospective medical care. Respondent's arguments are based on the assertion that claimant failed to prove that he sustained an accident that arose out of and occurred in the course of his employment with respondent. Having rejected the underlying contention, we also reject respondent's arguments addressed to the Commission's finding of causation and its awards of TTD benefits and prospective medical care.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the circuit court of Bureau County, which confirmed the decision of the Commission. This matter is remanded to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. App. 3d 327.

¶ 55 Affirmed and remanded.