2026 IL App (5th) 250429WC
No. 5-25-0429WC
Opinion filed: April 13, 2026

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

SUBWAY,	)	Appeal from the Circuit Court
	)	of Montgomery County.
Appellant,	)	
	)	
v.	)	No. 24 MR 29
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	
	)	Honorable
(Brenda Beck, Guardian of W.L.K., a Minor and	)	Dennis R. Atteberry,
Sole Heir of Grace Keeton, Appellee).	)	Judge, presiding.

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

OPINION

¶ 1 The claimant, Brenda Beck, guardian of W.L.K., a minor and sole heir of decedent, Grace Keeton, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2022)), seeking benefits for a fatal automobile accident that occurred on May 31, 2022, while the decedent was employed by respondent Subway (employer). The Illinois Workers' Compensation Commission (Commission) granted this application, the circuit court confirmed that decision, and the employer has now appealed to this court. For the following reasons, we reverse the judgment of the circuit court, set aside the Commission's decision, and remand this matter to the Commission for further proceedings consistent with this order.

¶ 2 A hearing on the claim was conducted before an arbitrator in August 2023. The evidence presented therein included a number of documents relevant to this appeal, including (1) a death certificate, (2) an order appointing Beck as W.L.K.'s guardian, (3) decedent's medical and funeral bills, (4) an expert opinion report prepared by Dr. Ronald Henson, (5) a certified Illinois State Police investigation report, and (6) a certified coroner's report. The evidence also included a stipulation that on May 31, 2022, the decedent, Grace Keeton, was driving from the Subway store in Gillespie, Illinois, to another Subway store in Litchfield, Illinois, to deliver restaurant supplies. As such, the record reflects that the arbitrator and counsel for the employer agreed that the decedent was to be considered a "traveling employee" for purposes of determining this claim for benefits under the Act.

¶ 3 The evidence presented showed that during the trip, the decedent was involved in a collision, in which her vehicle ran into the rear of a stopped truck and trailer. The decedent died as a result of blunt force trauma and was pronounced dead in the emergency room at Saint Francis Hospital in Litchfield, Illinois. Emergency room records contain a nurse's note that "no attempt to stop was made" and a notation of "distraction injury." A certified Illinois State Police investigative report stated that a firefighter at the scene collected a cell phone from the decedent's vehicle and told the investigating officer it was playing a video when he picked it up. The accident report noted cell phone use, no use of a safety belt, speeding, and failure to reduce speed to avoid a crash. A toxicology report in the Montgomery County coroner's report showed cardiac blood testing was positive for 2.3 ng/mL of 11-Hydroxy Delta-9 THC (an active metabolite of marijuana); 13 ng/mL of Delta-9 Carboxy THC (an inactive metabolite of marijuana); and 4.8 ng/mL of Delta-9 THC (an active ingredient of marijuana).

¶ 4 Dr. Ronald Henson, a consultant with Beran Consulting, Lab Works, and Media Services Inc., and an expert in drug and alcohol toxicology, physiology, and pharmacology, reviewed the police accident report, the coroner's preliminary death report, and the toxicology report. His report was entered into evidence and noted (1) that the toxicology testing was incomplete due to its failure to have a statement of the uncertainty in measurement, (2) that the American Board of Forensics guidelines state that impairment may not be based solely on lab results, (3) the difficulty in establishing a relationship between a person's THC levels and performance impairing effects without pattern of use evidence, (4) the poor correlation between blood THC and performance, and (5) the inadvisability of trying to predict effects based on blood THC concentrations alone. He opined, "The blood THC findings in this case cannot conclude to a reasonable degree of scientific certainty the result is in anyway reliable to conclude impairment nor associated with the work-related accident in this case involving Ms. Grace Keeton."

¶ 5 Brenda Beck testified that she was the mother of the decedent and is the maternal grandmother of the minor W.L.K., whose mother was the decedent. Beck was appointed guardian of the estate and person of the decedent's minor surviving child, W.L.K., in an order entered on February 21, 2023, by the Fourth Judicial Circuit, in Montgomery County, Illinois.

¶ 6 On this evidence, the arbitrator found that the decedent's death occurred due to an accident that occurred during the course of her employment and awarded the claimant a weekly death benefit as well as medical and funeral expense benefits. In its analysis, the arbitrator did not specifically discuss decedent's status as a "traveling employee," rather the decision concluded that claimant's entitlement to benefits depended more generally on the question of whether the decedent removed herself from the protections of the Act by committing any actions "intentionally, with knowledge that they were likely to result in serious injury, or with a wanton disregard of the

probable consequences." The arbitrator specifically concluded that the evidence of decedent's possible "speeding, distraction by use of a cell phone while driving and/or being under the influence of marijuana" did not support such a finding.

¶ 7 The employer appealed the arbitrator's decision to the Commission, contending in part that the arbitrator applied the incorrect legal test for traveling employees under the Act. The Commission affirmed and adopted the arbitrator's decision in its entirety.

¶ 8 The employer then appealed the Commission's decision to the Sixth Judicial Circuit, Champaign County, Illinois. On claimant's motion, the matter was transferred to the Fourth Judicial Circuit, Montgomery County, Illinois. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 9 On appeal, the employer contends—*inter alia*—that the Commission erred by adopting the arbitrator's decision, which did not utilize the law applicable to traveling employees. We agree and find this issue to be dispositive of this appeal.

¶ 10 An employee's injury is typically compensable under the Act only if it "aris[es] out of" and "in the course of" her employment. *Id.* § 2; *Bolingbrook Police Department v. Illinois Workers' Compensation Comm'n*, 2015 IL App (3d) 130869WC, ¶ 37. The employee bears the burden of proving each of these elements by a preponderance of the evidence. *Bolingbrook Police Department*, 2015 IL App (3d) 130869WC, ¶ 37. 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

whether a claimant's injury arose out of her employment is typically 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.

¶ 11 However, a "traveling employee" is one whose work requires her to travel away from her employer's office. *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, ¶ 16. The determination whether an injury to a traveling employee arises out of and in the course of her employment is governed by different rules than the rules applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985). A traveling employee is deemed to be in the course of her employment from the time that she leaves home until she returns. *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545 (2010). An injury sustained by a traveling employee arises out of her employment if she was injured while engaging in conduct that was reasonable and foreseeable, *i.e.*, conduct that "might normally be anticipated or foreseen by the employer." (Internal quotation marks omitted.) *Robinson v. Industrial Comm'n*, 96 Ill. 2d 87, 92 (1983); *Town of Cicero v. Illinois Workers' Compensation Comm'n*, 2024 IL App (1st) 230609WC, ¶ 26; *Pryor v. Illinois Workers' Compensation Comm'n*, 2015 IL App (2d) 130874WC, ¶ 20; *Kertis*, 2013 IL App (2d) 120252WC, ¶ 16. Whether an employee was injured while engaging in conduct that was reasonable and foreseeable to the employer is a question of fact to be resolved by the Commission. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 17. We will typically confirm the Commission's determination on this question unless it is against the manifest weight of the evidence. *Id.*

¶ 12 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, to determine 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.

¶ 13 Again, the evidence here included a stipulation that the decedent was driving from one Subway store to another Subway store to deliver restaurant supplies at the time of the incident. As such, the arbitrator and counsel for the employer agreed that the decedent was to be considered a "traveling employee" for purposes of determining this claim for benefits under the Act. As such, the arbitrator and the Commission were obligated to analyze the claim for benefits in this matter under the applicable "reasonable and foreseeable" legal test outlined above, a request that was specifically made by Subway in the statement of exceptions to the arbitrator's decision it filed with the Commission below. Indeed, on appeal to this court it is undisputed by the parties that the decedent was a "traveling employee" at the time of her fatal crash.

¶ 14 Nevertheless, the record is clear that here the Commission "affirmed and adopted" the decision of the arbitrator in full and without further analysis. As noted above, the arbitrator's decision itself made no reference to nor any attempt to apply the "reasonable and foreseeable" test applicable to traveling employees. Rather, the arbitrator's decision, adopted by the Commission, analyzed the issue by considering whether the decedent committed actions "intentionally, with knowledge that they were likely to result in serious injury, or with a wanton disregard of the probable consequences."

¶ 15 In support of applying this analysis, the arbitrator's decision (and thus the Commission's decision as well) cited to *McKernin Exhibits, Inc. v. Industrial Comm'n*, 361 Ill. App. 3d 666, 671 (2005), which in turn specifically relied upon *Stembridge Builders, Inc. v. Industrial Comm'n*, 263 Ill. App. 3d 878, 880-82 (1994). However, neither of these cases acknowledged nor applied the recognized test for traveling employees under the Act discussed above. Indeed, the decision in

Stembridge framed the issue before it as follows: "The issue is whether speeding under the conditions which existed or which violates a statute constitutes a deviation which removes claimant from the scope of the employment." *Id.* at 881. This court specifically rejected the *Stembridge* decision's applicability to cases involving traveling employees, where the reasonable and foreseeable analysis was not addressed therein. *Jensen v. Industrial Comm'n*, 305 Ill. App. 3d 274, 280 (1999).[1]

¶ 16 Thus, rather than requiring proof that decedent's actions were reasonable and foreseeable so as to be entitled to benefits under the Act as a traveling employee, the analysis conducted by the Commission below allowed claimant to establish entitlement to benefits so long as decedent was not committing actions "intentionally, with knowledge that they were likely to result in serious injury, or with a wanton disregard of the probable consequences." The Commission's conclusion that decedent's actions did not rise to that level may well be correct, but this conclusion does not answer the relevant question of if—as a traveling employee—her actions were merely so unreasonable and unforeseeable as to remove her from the protections of the Act.

¶ 17 The question for this court, therefore, is what relief we should grant considering the Commission's use of an incorrect legal test to analyze the claim for benefits in this case. In deciding this issue, we note that a reviewing court may overturn a Commission decision if it finds

[1]As to the applicability of the reasonable and foreseeable test to cases involving traveling employees injured or killed in automobile accidents, we further note that our supreme court has repeatedly applied this test over decades. *The Venture—Newberg-Perini, Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2013 IL 115728, ¶ 18; *Robinson*, 96 Ill. 2d at 92; *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69-70 (1975); *David Wexler & Co. v. Industrial Comm'n*, 52 Ill. 2d 506, 510 (1972). It is axiomatic that the appellate court must follow our supreme court's precedent. *Mekertichian v. Mercedes-Benz U.S.A., L.L.C.*, 347 Ill. App. 3d 828, 836 (2004) ("After our supreme court has declared the law with respect to an issue, this court must follow that law, as only the supreme court has authority to overrule or modify its own decisions.").

that the decision is contrary to law. *Travelers Insurance v. Precision Cabinets, Inc.*, 2012 IL App (2d) 110258WC, ¶ 22. Furthermore, "[i]n a workers' compensation proceeding, the Commission, an administrative agency, is the ultimate decision-maker." *Id.* ¶ 33. And again, whether a traveling employee was injured while engaging in conduct that was reasonable and foreseeable to the employer is a question of fact to be resolved by the Commission in the first instance. *Kertis*, 2013 IL App (2d) 120252WC, ¶ 17.

¶ 18 As such, it has been repeatedly recognized that where the Commission utilizes an incorrect legal test to evaluate a disputed question of fact within its purview, the matter should be remanded to the Commission for reconsideration of the issue in the first instance under the proper legal standard. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 46; *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1024-25 (2005); *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272, 285 (2004). We find this matter presents just such a situation and that this matter must therefore be remanded to the Commission for a proper analysis under the correct "reasonable and foreseeable" legal test for traveling employees.

¶ 19 For the foregoing reasons, we reverse the judgment of the circuit court, set aside the Commission's decision, and remand this matter to the Commission with directions to redetermine claimant's entitlement to compensation under the Act consistent with this court's opinion.

¶ 20 Circuit court judgment reversed.

¶ 21 Commission decision set aside; cause remanded with directions.

***Subway v. Illinois Workers' Compensation Comm'n*, 2026 IL App (5th) 250429WC**

Decision Under Review:	Appeal from the Circuit Court of Montgomery County, No. 24-MR-29; the Hon. Dennis R. Atteberry, Judge, presiding.
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