2024 IL App (5th) 230480WC-U

Order filed May 17, 2024

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CITY OF MASCOUTAH,	)	Appeal from the Circuit Court
	)	of the 20th Judicial Circuit,
	)	St. Clair County, Illinois.
Appellant,	)	
	)	
v.	)	Appeal No. 5-23-0480WC
	)	Circuit No. 22-MR-212
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*, (John Harris, IV,	)	Honorable Julie K. Katz,
Appellee.)	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Mullen, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 The Commission's finding that the claimant established that he sustained accidental injuries arising out of and in the course of his employment was not erroneous as a matter of law or against the manifest weight of the evidence.

¶ 2 The claimant, John Harris, IV, filed an application for adjustment of claim under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2020)), seeking benefits for injuries to his head, spine, and body as a whole that he allegedly sustained on June 11, 2021, while he

was employed by the respondent City of Mascoutah (employer). Following a hearing, an arbitrator found that the claimant had sustained accidental injuries that arose out of and in the course of his employment with the employer. The arbitrator awarded temporary total disability benefits (TTD), medical expenses and prospective medical care.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision.

¶ 4 The employer appealed the Commission's decision to the circuit court of St. Clair County, which confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 FACTS

¶ 7 The claimant worked for the employer as a lifeguard at the employer's pool. At the time of the work accident, he was 17 years old and had worked for the employer in that capacity for approximately two weeks.

¶ 8 On June 11, 2021, the claimant suffered an injury to his spine while attempting a "back dive" into the pool during his break time. The claimant testified that he was on an authorized 30-minute break when he and another lifeguard decided to dive into the pool in the designated diving area. At that time, were numerous patrons in and around the pool as well as multiple lifeguards in the vicinity. After watching a patron and another lifeguard back dive into the pool, the claimant attempted a back dive. While doing so, the claimant struck his head and neck on the edge of the pool, sustaining serious injuries to his cervical spine.

¶ 9 The claimant was taken to the emergency room at St. Louis Children's Hospital. The emergency room staff noted that the claimant had sustained a C6 fracture, a cervical spinal cord injury, and a complex scalp laceration. The claimant was in significant pain and could not feel

or move most of his body. Cervical spinal surgery was recommended.

¶ 10 The claimant underwent a C5-C7 anterior cervical spinal fusion with C6 corpectomy and repair of the laceration. Following surgery, the claimant's pain mostly resolved but he still had limited sensation and movement below the level of injury. He remained at St. Louis Children's Hospital until July 19, 2021, when he was discharged and transferred to the Shirley Ryan Ability Lab for inpatient therapy to regain motor control, movement, and sensation. The claimant was still in inpatient therapy at the time of the arbitration hearing.

¶ 11 The claimant testified that, at the time of the accident, he was on a 30-minute break. It is undisputed that the employer allowed its lifeguards to use the pool during their breaks. Customarily, the claimant would either eat his lunch in the lifeguard shack, rest, or swim in the pool while on break. He stated that he would get in the pool to cool off from the summer heat and swim with his coworkers. The claimant testified that, while he was in the pool during his breaks, he would often test his diving, swimming, and under water abilities. He stated that he wanted to improve as a swimmer and diver because he believed those skills were important as a lifeguard. The claimant testified that he had attempted to perform a back dive on the day of the accident to see if he had the skill to do it and to enjoy his time in the pool.

¶ 12 The claimant's accident and the events immediately preceding the accident were captured on video. The video was played at the arbitration hearing during the claimant's testimony. The video showed that: (1) a patron performed a back dive into the pool prior to the claimant's accident; (2) after the patron entered the pool and cleared the way, a lifeguard named Avery, who was also on break at the time, also performed a back dive into the water; (3) following Avery's back dive into the pool, the claimant attempted to perform the same dive and struck his head and neck on the edge of the pool; (4) Avery came to the claimant's aid and stabilized him until EMTs

arrived and took the claimant to the emergency room. There was no audio recorded.

¶ 13 The claimant testified that there are pool rules and regulations which are to be followed by both swimmers and lifeguards. He learned the importance of following and enforcing pool rules during his lifeguard certification class. It is the job of the lifeguards and managers to enforce the pool rules and regulations to maintain safety. Such rules prohibit running, front flips, and back flips. When a swimmer, diver, or lifeguard violates a pool rule, it is the responsibility of the lifeguards to correct the improper conduct and warn them by getting their attention or blowing their whistle. Violators were regularly whistled for not following the rules. The claimant was aware of the pool rules and regulations and he enforced such rules while performing his work duties. He was also aware that he needed to act responsibly while using the pool during his break time.

¶ 14 The claimant testified that, before he began working as a lifeguard for the employer, he was given written materials that addressed both the job duties and the safety rules. However, he could not recall ever seeing or signing a document entitled "Mascoutah Pool Lifeguards Rules and Regulations," which states that back dives were against pool rules.

¶ 15 The claimant testified that he was not aware that back dives were not allowed. He did not recall ever enforcing a rule against back dives. Nor did he recall seeing any other lifeguard ever enforce such a rule. When a patron performed a back dive into the pool shortly before the claimant's accident, neither Avery, nor the lifeguard on duty, nor any other lifeguard blew a whistle or corrected the patron's behavior. The claimant testified that Avery had worked as a lifeguard at the employer's pool for several years and the claimant looked up to him. When Avery performed a back dive into the pool that day, no lifeguard blew a whistle or otherwise corrected his behavior. When the claimant subsequently attempted to perform a back dive, he

was not corrected or notified by any lifeguard of a rule violation nor was a whistle blown.

¶ 16 Although the claimant could not recall whether he was exercising caution at the time he attempted the back dive, he testified that he would not have attempted the dive if he thought that he was not supposed to do it because it was his job to uphold and enforce the pool rules. He did not believe that his activities were dangerous or risky. The claimant testified that he believed that performing a back dive could improve his abilities as a swimmer and lifeguard by making him more comfortable in the pool, more skilled as a lifeguard, and more in control of his body.

¶ 17 The claimant testified that he thought he recalled getting a copy of an employee handbook. When shown a copy of the handbook, he acknowledged that his signature was on it. He could not remember reviewing the handbook. The handbook states that that the employer provides information to its employees about workplace safety and health issues through regular internal communication channels. However, the handbook does not address any rule against back diving.

¶ 18 The claimant recalled meeting with pool managers before starting his shifts on most days. He testified that, during those meetings, the managers talked about making sure that the pool was cleaned up and ready for patrons to enter. He did not recall discussing safety rules with any managers or pool personnel.

¶ 19 The claimant testified that there were a few bulletin boards and posters around the pool that addressed some rules, including “no running” and “no diving in undesignated areas.” He could not remember anything else that these posters or bulletin boards said.

¶ 20 Julia Biggs, the employer’s Executive Assistant, testified on behalf of the employer. Biggs’s job duties include facilitating the opening and operation of the pool. Although Biggs works at City Hall, she will go to the pool at “random times” if something is brought to her

attention that needs to be addressed by her. Biggs was not on scene at the time the claimant was injured.

¶ 21 Biggs was responsible for hiring lifeguards and ensuring that they received appropriate training and were certified before the beginning of the pool season. Biggs testified that, during a lifeguard's first week or two on the job, the lifeguard would come in early and be instructed by pool managers to familiarize him with a lifeguard's duties, the pool rules (including safety rules), lifeguard etiquette, and maintaining a clean pool. Biggs testified that the pool safety rules were memorialized in a document entitled "Mascoutah Pool Lifeguards Rules and Regulations." That document expressly prohibited front flips, back flips, and back dives. Each lifeguard was given a copy of the document, and the pool managers reviewed the rules contained in the document during daily meetings with the new lifeguards prior to the beginning of their shift. The safety rules covered in the document applied to lifeguards as well as patrons. Biggs stated that the claimant was given a copy of the document.

¶ 22 Biggs further testified that a copy of the pool rules and regulations was posted in the lifeguard shack. She stated that the employer's Exhibit 2 was an accurate photograph of the rules and regulations that were posted in the lifeguard shack as of the date of the claimant's accident. One of those rules was "[n]o front flips, back flips or back dives."

¶ 23 Biggs testified that she had witnessed lifeguards blow whistles for violations of the pool's safety rules. She stated that there was no tolerance for back dives at the pool, and she had witnessed lifeguards blow whistles for back dives on multiple occasions. She noted that lifeguards are disciplined for not handling their roles seriously or for not whistling violations.

¶ 24 On cross-examination, Biggs testified that the pool managers rely on the lifeguards on duty to enforce the rules and regulations of the pool. However, she was not aware of whether the

lifeguards ever enforced the rules and regulations against other lifeguards. She did not know why a lifeguard did not whistle a violation when the patron in the video performed a back dive into the pool. She did not know why a lifeguard did not whistle a violation when Avery performed a back dive into the pool. She acknowledged that the claimant had never been disciplined for violating any rules or regulations.

¶ 25 Madelyn Groff also testified on the employer's behalf. Groff was the head manager of the pool at the time of the claimant's accident. She worked with Biggs and engaged in regular communication with the lifeguards regarding their responsibilities. Although Groff was at the pool regularly, she was not there the day of the claimant's accident.

¶ 26 Groff testified that, during the first two weeks after a lifeguard starts working at the pool, the managers go over the safety rules with the lifeguards before each shift. Groff stated that the safety rules that the managers reviewed with the lifeguards were those contained in the "Mascoutah Pool Lifeguards Rules and Regulations" document. Groff confirmed that the pool rules were posted in the lifeguard shack.

¶ 27 Groff further testified that, in addition to the meetings that the managers conducted with the lifeguards immediately before the lifeguards started their shifts, Groff engaged in group communications with pool managers and lifeguards. These communications included the importance of following and enforcing the rules. However, Groff could not recall whether back dives were ever addressed during these group communications.

¶ 28 Groff testified that the lifeguards were instructed to blow their whistles when back dives occurred. Groff herself had blown her whistle when she saw someone performing a back dive, and she had seen other lifeguards do the same. However, Groff admitted that it was possible that there were occasions when people had performed back dives without anyone blowing a whistle.

¶ 29 Groff testified that she had not worked with the claimant but had worked with Avery, whom she described as a good lifeguard. She did not know why no whistle was blown when the patron or Avery performed back dives into the pool before the claimant did.

¶ 30 Vanessa Lorenzana also testified on behalf of the employer. Lorenzana is the Red Cross life-saving instructor who provided the lifeguard certification classes the claimant completed begore he began working for the employer. Lorenzana had been a lifeguard for three or four years. She testified that all individuals who took her certification training were told to follow and to enforce the local pool rules. They were also told to act responsibly while on breaks because the patrons would be watching the lifeguards.

¶ 31 Lorenzano testified that nothing about a back dive would improve the skills of a lifeguard because a lifeguard must maintain eye contact at all times with the person in need of assistance.

¶ 32 On cross-examination, Lorenzana stated that, in her experience, not all lifeguards enforce all pool rules all the time. She has never worked as a lifeguard for the employer and was not aware of whether any rules or regulations were enforced at the employer's pool.

¶ 33 The arbitrator found that the claimant had sustained an accident that arose out of and in the course of his employment. The arbitrator analyzed the issue primarily under the "personal comfort" doctrine. That doctrine provides that, when an employee is injured on the job while performing an act of personal comfort, such as having lunch or engaging in authorized recreation during a break from work, the injury is deemed to arise in the course of the employment unless the acts are performed in an unusual, unreasonable, and unexpected manner and the employer has not acquiesced in the unreasonable performance. The arbitrator also relied upon *Republic Iron v. Industrial Comm'n*, 302 Ill. 401 (1922), which holds that, when an employee is injured while violating a work rule, the injury may still "arise out" of the employment so long as the

violation does not take the employee entirely out of the sphere of his employment.

¶ 34 The arbitrator credited the claimant's testimony that he was not aware that back dives were prohibited by the employer. The claimant testified that he did not recall such a rule being communicated to him by the employer, either in daily meetings with the pool managers, during group meetings, or in any notices that were posted in the lifeguard shack or near the pool. The arbitrator observed that, although Biggs testified that the claimant was given the "Mascoutah Pool Lifeguards Rules and Regulations," which expressly prohibit back dives, Biggs never received a copy of that document bearing the claimant's signature of receipt, and the employer did not present any such signed document during the hearing. The arbitrator further noted that, although Groff testified that the rules covered in the document were posted in the lifeguard shack, there was "no evidence that [the claimant] reviewed the two-page document and/or was specifically told that back diving was prohibited." In addition, although Biggs testified that the rule barring back dives would have been covered during the daily meetings between the lifeguards and the pool managers, there was no evidence that Biggs had personally attended any of the daily meetings to know what was or was not discussed with the lifeguards. The arbitrator further noted that a document entitled "Meetings," which Biggs said was reviewed with the lifeguards to review their job duties and responsibilities, did not address back dives.

¶ 35 The arbitrator reviewed the video of the accident and credited the claimant's unrebutted testimony that no lifeguard blew a whistle when the patron, Avery, or the claimant performed back dives at that time. The arbitrator noted that none of the employer's witnesses was at the pool when the accident occurred, and none could explain why no whistle was blown during any of the three back dives. The claimant testified that he had never witnessed another lifeguard tell someone not to do a back dive or blow the whistle when a back dive was performed, and Groff

acknowledged that it was possible that that lifeguards have not blown whistles on back dives.

¶ 36 The arbitrator concluded that the evidence did not support an inference that the claimant was told or "specifically made aware" that back dives were prohibited or that he had ever witnessed a lifeguard blow a whistle for a back dive.

¶ 37 Based on her consideration of all the evidence, the arbitrator found that the claimant's conduct of performing a back dive into the pool was not done in an unusual, unreasonable or unexpected manner. The arbitrator further concluded that, even if the claimant's back dive was arguably unreasonable or unexpected, the video showed that the employer had acquiesced in such conduct "by allowing the acts to occur without correction."

¶ 38 The arbitrator also found that the claimant's current condition of ill-being was causally related to his work accident and awarded TTD, medical expenses and prospective medical care.

¶ 39 The employer appealed the arbitrator's decision to the Commission. The Commission affirmed and adopted the arbitrator's decision in its entirety.

¶ 40 The employer then appealed the Commission's decision to the circuit court of St. Clair County, which confirmed the decision. The circuit court found that the claimant's injuries arose out of his employment "by virtue of the environmental risks associated with his employment as a lifeguard." The court further found that the claimant's injuries occurred in the course of his employment under the personal comfort doctrine because, at the time of the accident, the claimant was on the premises of his employment surrounded by risks unique to his employment as a lifeguard, he was in the middle of a scheduled, required shift break, and the employer allowed him to enter the pool during his break. The circuit found that the claimant "did not engage in his act of personal comfort in an unreasonable manner, especially while following the example of a senior staff member with no repercussions."

¶ 41 This appeal followed.

¶ 42 ANALYSIS

¶ 43 The employer argues that the Commission erred in finding that the claimant sustained an accidental injury arising out of and in the course of his employment.

¶ 44 As an initial matter, we must clarify the applicable standard of review. At times, the employer seems to suggest that we should review the Commission's findings *de novo* because the dispositive facts are either undisputed or unrebutted. We disagree. The parties dispute whether the claimant was aware that the employer had a rule prohibiting back dives and whether such a rule was regularly enforced, and the claimant's testimony rebuts the testimony of the employer's witnesses on these issues. In any event, the evidence presented supports more than one reasonable inference on that issue and on other potentially dispositive issues, such as whether the employer effectively acquiesced in its lifeguards' performance of back dives. Accordingly, we review the Commission's decision under the manifest weight of the evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987).

¶ 45 To be compensable under the Workers' Compensation Act, the injury complained of must be one "arising out of and in the course of the employment." 820 ILCS 305/2 (West 2020). An injury "arises 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. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 393 (1995). An injury is received " 'in the course of employment [if] it occurs within a period of employment, at a place where the worker may reasonably be in the performance of his duties, and while he is fulfilling those duties or engaged in something incidental thereto.' " *Parro*, 167 Ill. 2d at 393, quoting *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill. 2d 361, 367 (1977).

¶ 46 An injury arises out of the employment if (1) the risk of injury is peculiar to the work, or (2) the risk is not peculiar to the work, but an employee is exposed to the risk to a greater degree than the general public by virtue of the employment. *Orsini*, 117 Ill. 2d at 45. If an employee is injured while performing his job duties or while taking an authorized break at his place of employment, the injury may be compensable even if it results from a violation of the employer's work or safety rules. *Saunders v. Imdustrial Comm'n,* 189 Ill. 2d 623, 628 (2000); *Heyman Distributing Co. v. Industrial Comm'n*, 376 Ill. 90, 92-93 (1941); *Republic Iron & Steel Co. v. Industrial Comm'n,* 302 Ill. 401, 406 (1922); *Johnson v. Illinois Workers' Compensation Comm'n*, 2011 IL App (2d) 100418WC, ¶¶ 26-30; *J.S. Masonry, Inc. v. Industrial Comm'n*, 369 Ill. App. 3d 591, 596-98 (2006); *Chadwick v. Industrial Comm'n*, 179 Ill. App. 3d 715 (1989). If the violation of the rule occurs while the claimant is performing an act of personal convenience that is "entirely out of the sphere of his employment," the resulting injury does not arise out of the employment. *Saunders*, 189 Ill. 2d at 628; *Republic Iron*, 302 Ill. 406; *Dodson v. Industrial Comm'n*, 308 Ill. App. 3d 572, 576 (1999). "If, however, in violating such a rule *** the employee does not put himself out of the sphere of his employment, so that it may be said he is not acting in the course of it, he is only guilty of negligence in violating such rule or order and recovery is not thereby barred. *** [I]t does not matter in the slightest degree how many orders the employee disobeys or how bad his conduct may have been if he was still acting in the sphere of his employment and in the course of it the accident arose out of it." *Republic Iron*, 302 Ill. at 406.

¶ 47 The determination of whether an injury arose out of one's employment is a question of fact. *Hosteny v. Illinois Workers' Compensation Comm'n,* 397 Ill. App. 3d 665, 674 (2009). The question of whether the claimant's conduct so deviated from the employer's business that it took

him out of the scope of his employment is also a question of fact. *Paganelis v. Industrial Comm'n*, 132 Ill. 2d 468, 483-84 (1989). In resolving issues of fact, it is the Commission's role to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine the relative weight to accord the evidence, and resolve conflicts in the witness testimony. *Hosteny*, 397 Ill. App. 3d at 674.

¶ 48 We will not overturn the Commission's decision regarding whether an injury arose out of and in the course of employment unless it is contrary to the manifest weight of the evidence. *Id.* 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). A reviewing court "will not discard permissible inferences drawn by the Commission based upon competent evidence merely because other inferences might be drawn by" the reviewing court. *Orsini*, 117 Ill. 2d at 44. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 49 Applying these deferential standards, we cannot say that the Commission's finding that the claimant's injuries arose out of his employment was against the manifest weight of the evidence. The claimant was injured at his workplace while taking an authorized break. The employer allowed the lifeguards to use the pool during their breaks. Although the claimant was on break at the time, he was injured while diving, which is an activity directly connected to his duties as a lifeguard. The claimant was exposed to the risks of swimming and diving more often than members of the general public by virtue of his employment.

¶ 50 The parties dispute whether the claimant was made aware that back dives were prohibited

and whether the employer consistently enforced violations of the rule. The claimant testified that he was not aware of any rule prohibiting back dives and that he had never seen anyone "whistled" for performing a back dive. The video of the claimant's accident shows a patron and Avery performing back dives immediately before the claimant did, and the claimant testified that neither the lifeguard on duty nor any other lifeguard blew a whistle on either occasion. That testimony was not disputed by the employer. (Because the video of the incident was without audio, only someone who was present at the time could have disputed the claimant's testimony. The employer did not call Avery or the lifeguard on duty at the time to testify.) Although Biggs testified that the claimant was given the "Mascoutah Pool Lifeguards Rules and Regulations," which expressly prohibit back dives, Biggs never received a copy of that document bearing the claimant's signature of receipt, and employer did not present any such signed document during the hearing. Biggs testified that the rule barring back dives would have been covered during the daily meetings between the lifeguards and the pool managers, but there was no evidence that Biggs had personally attended any of the daily meetings to know what was or was not discussed with the lifeguards, and none of the employer's witness claimed to have witnessed the claimant being told about the rule barring back dives during any such meeting. Further, Biggs was not aware of whether the lifeguards enforced the pool rules against other lifeguards, and Groff admitted that it was possible that there were occasions when people had performed back dives without anyone blowing a whistle.

¶ 51 This evidence supports a reasonable inference that the claimant was not made aware of any rule barring back dives and that any such rule was not regularly enforced. Although the employer presented evidence supporting a contrary inference, we cannot say that the Commission's findings were against the manifest weight of the evidence. The Commission was

entitled to credit the claimant's testimony over that of the employers' witnesses and to determine the weight to be accorded to the evidence. Because there was sufficient evidence in the record to support the Commission's findings, we may not second-guess the Commission's credibility determinations or reweigh the evidence to reach a difference conclusion.[1]

¶ 52 But even assuming *arguendo* that the claimant violated one of the employer's safety rules by performing a back dive, the violation did not take him entirely outside the scope of his employment. This is not a case where the claimant was in an area he was not supposed to be or using equipment that he was not allowed to use. At the time of his injury, the claimant was swimming and diving in the pool during his lunch break, which he was authorized to do by the employer. Accordingly, even if the claimant acted negligently while diving, his conduct did not take him wholly outside the scope or sphere of his employment.

¶ 53 The Commission's finding that the claimant's injury occurred in the course of his employment was also supported by the evidence. An injury is incurred "in the course of" employment when it occurs within the period of employment, at a place where the employee can reasonably be expected to be in the performance of his duties, and while he is performing those duties or doing something incidental thereto. *Segler v. Industrial Comm'n*, 81 Ill. 2d 125, 128 (1980). Acts of personal comfort are generally held to be incidental to employment duties and, thus, are in the course of employment. *Id.* If the employee voluntarily and in an unexpected manner exposes himself to a risk outside any reasonable exercise of his duties, any injury

[1]The employer argues that the claimant did not rebut the testimony of its witnesses because he merely stated that he *could not recall* being informed of rule prohibiting back diving and did not actually *deny* that he was so informed. We disagree. The claimant clearly testified that he was not aware of a rule barring back diving and that he would not have performed a back dive if he had known of such a rule. In any event, there was other evidence in the record that undermined the employer's claims that it had informed the claimant of the rule and that the rule was regularly enforced.

incurred as a result is not within the course of employment. *Id.* However, if the employer has knowledge of or acquiesces in such conduct as a custom or practice, the injuries are compensable. *Id.*; *Scheffler Greenhouses, Inc.*, 66 Ill. 2d at 367 (holding that an employee's injuries arose out of and in the course of her employment where, *inter alia*, she was injured at a pool near the greenhouse where she worked, and the employer had invited its employees to use the pool on breaks to cool off from the hot and humid conditions of the workplace); see also *Union Starch v. Industrial Comm'n*, 56 Ill. 2d 272, 277 (1974).

¶ 54 In this case, the employer authorized its lifeguards to use the pool during breaks for their own comfort and recreation. The claimant was injured when he dove into the pool while on an authorized break. Diving into the pool was a regular part of the claimant's job duties. Accordingly, if the employer did not consistently enforce a prohibition on back dives, the claimant's performance of such a dive would not have been unexpected and would not have exposed him to a risk outside any reasonable exercise of his duties. As noted, there was conflicting evidence presented as to whether the claimant was made aware of a rule against back dives and whether any such rule was enforced. Accordingly, the evidence supports more than one reasonable inference as to whether the claimant's performance of a back dive was unexpected or unreasonable, and as to whether the employer effectively acquiesced in the lifeguards' practice of performing back dives. We cannot say that the Commission's choice among competing reasonable inferences on these issues was against the manifest weight of the evidence.

¶ 55 The employer cites *Segler* for the proposition that a claimant may not show that his employer acquiesced in his performance of a dangerous act merely by alleging that he had seen a coworker perform the same act. However, in *Segler*, there was no evidence that the employer

was aware of the co-worker's performance of the act in question. Here, by contrast, the video shows a patron and another lifeguard performing back dives, and it is undisputed that neither the lifeguard on duty nor any other lifeguard blew a whistle on either occasion. Moreover, the co-worker at issue in this case (Avery) was a senior lifeguard who had more work experience than the claimant, and the claimant testified that he looked up to him. The fact that a senior lifeguard performed a back dive with impunity could reasonably have led the claimant to conclude that such dives were permitted and could have encouraged him to attempt a back dive himself. Finally, the dangerous act performed by the employee in *Segler* (putting a pie in an industrial oven), was done solely for the employee's benefit. Here, by contrast, the claimant's swimming and diving in the pool arguably benefitted the employer because it allowed the claimant to cool off and to practice some of the activities he performed in the exercise of his duties as a lifeguard.

¶ 56 We hold that the Commission's finding that the claimant sustained accidental injuries arising out of and in the course of his employment was not against the manifest weight of the evidence. We note that, in the "Issues" section of its brief, the employer purports to challenge the Commission's award of TTD, medical expenses and prospective medical care. However, its brief addresses only the issue of accident. We therefore decline to address any other issue.

¶ 57 CONCLUSION

¶ 58 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County, which confirmed the Commission's decision.

¶ 59 Affirmed.