14 IL.W.C. 20415 (Ill.Indus.Com'n), 14 IL.W.C. 020315, 18 I.W.C.C. 0587, 2018 WL 4996298

Illinois Workers' Compensation Commission

State of Illinois

County of Peoria

ANA ELIZABETH SUITS, Petitioner
v.
MARQUETTE GROUP, Respondent

No. 14 W.C. 20415, No. 14 W.C. 020315, No. 18 I.W.C.C. 0587
September 28, 2018

DECISION AND OPINION ON REVIEW

***1** Timely Petition for Review having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of accident, notice, causation, medical, temporary total disability, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 6, 2017 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

Charles J. DeVriendt
Joshua D. Luskin

Special Concurrence

I concur with the result reached by the majority. I write separately as I utilized a different analysis of the "in the course of" and "arising out of" components to arrive at the decision.

Petitioner slipped and fell on two separate occasions, June 6, 2012 and November 14, 2012 while walking on a public sidewalk during her break. She was not on Respondent's premises when the falls occurred nor did Respondent maintain or control the sidewalks where Petitioner fell.

"This court has repeatedly held that "when an employee slips and falls, or is otherwise injured, at a point off the employer's premises while traveling to or from work, his injuries are not compensable.' [citations omitted]. Prior decisions of this court have noted two exceptions to this general rule." *Illinois Bell Telephone Company v. The Industrial Commission*, 131 Ill. 2d 478, 483-84, 546 N.E.2d 603 (1989). A claimant's injury can be deemed to occur ""in the course of" the employment 1) if the injury is sustained in a parking lot maintained or controlled by the employer, or 2) if the employee's presence is required while performing her job duties and she is exposed to a common risk to a greater degree than the general public. *Id.* Petitioner

was injured on a public sidewalk and not in a parking lot, so the first exception is inapplicable. The second exception is no more applicable. Petitioner's presence on the public sidewalk was not required in performance of her job duties. The facts in the present case are unlike those presented in *Bommarito v. Industrial Commission*, 82 Ill. 2d 191 (1980) or *Brais v. Illinois Workers' Compensation Commission*, 2014 IL App (3d) 120820WC where the claimants were required to use a certain route to access the employers' premises. Here, Petitioner was merely walking on a public sidewalk when she fell.

***2** Petitioner argues the "in the course of" requirement is satisfied under the personal-comfort doctrine. "In lunch hour cases, the most critical factor in determining whether the accident arose out of and in the course of employment is the location of the occurrence. Thus, where the employee sustains an injury during the lunch break and is still on the employer's premises, the act of procuring lunch has been held to be reasonably incidental to the employment, [citations omitted]." *Eagle Discount Supermarket v. Industrial Commission*, 82 Ill. 2d 331, 340, 412 N.E.2d 492 (1980). Petitioner was not on her lunch break *per se* but the same reasoning applies. Petitioner requests we expand the personal-comfort doctrine to extend to off-premises breaks but such expansion was rejected by the Supreme Court of Illinois in *Lynch Special Services v. Industrial Commission*, 76 Ill. 2d 81, 389 N.E.2d 1146 (1979). The personal-comfort simply does not apply.

Even assuming *arguendo*, Petitioner proved her falls occurred "in the course of" her employment, she failed to prove her injuries "arose out of" her employment. Regarding falls, "a claimant must present evidence supporting a reasonable inference that the fall stemmed from an employment-related risk. After all, the 'arising out of requirement contemplates 'a causal connection between the accidental injury and some risk incidental to or connected with the activity an employee must do to fulfill [her] duties.' *Stapleton, 282 Ill. App. 3d at 15*. Awarding compensation for a purely unexplained fall would eviscerate this requirement." *Builders Square v. The Industrial Commission*, 339 Ill. App. 3d 1006, 1010, 791 N.E.2d 1308 (2003).

Regarding her fall of November 14, 2012, Petitioner testified she did not know what caused her to fall. Therefore, it is incumbent on Petitioner to set forth sufficient evidence from which it can be inferred her fall was work-related. Petitioner failed to do so.

Regarding her fall of June 6, 2012, Petitioner testified she fell on a raised piece of concrete. Petitioner failed to present any evidence such concrete was a hazardous condition. Petitioner presented no evidence suggesting that the sidewalk was more hazardous or different than any other sidewalk. There is simply no evidence the sidewalk and the lip of concrete was defective or hazardous.

Accordingly, for the reasons set forth above, I concur with the decision of the majority.

L. Elizabeth Coppoletti

Attachment 1

NOTICE OF ARBITRATOR DECISION

SUITE, ANNA ELIZABETH, Employee/Petitioner

MARQUETTE GROUP, Employer/Respondent

Case No. **14WC020415**

14WC020315

***3** On January 6, 2017, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.63% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Attachment 2

STATE OF ILLINOIS

COUNTY OF Peoria

ARBITRATION DECISION

Anna Elizabeth Suits, Employee/Petitioner

v.

Marquette Group, Employer/Respondent

Case No. **14** WC **20415**

Consolidated cases: **14 WC 20315**

An. Application for Adjustment of Claim was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nowak**, Arbitrator of the Commission, in the city of **Peoria, IL**, on **March 22, 2016**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?

E. ☒ Was timely notice of the accident given to Respondent?

F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?

J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD

L. ☒ What is the nature and extent of the injury?

FINDINGS

On **November 14, 2012**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did not*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**28,964.00**; the average weekly wage was $**557.00**.

On the date of accident, Petitioner was **51** years of age, ***single*** with **0** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**0** for TTD, $**0** for TPD, $**0** for maintenance, and $**0** for other benefits, for a total credit of $**0**.

***4** Respondent is entitled to a credit of $**0** under Section 8(j) of the Act.

ORDER

Because Petitioner failed to meet her burden of establishing that an accident occurred which arose out of and in the course of her employment with Respondent, benefits are denied.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

(Illegible Signature)
Arbitrator

Date **December 20, 2016**

January 6, 2017

FINDINGS OF FACT

The Petitioner worked for the Respondent in the position of interactive product specialist. In this position she created and managed interactive campaigns for assigned product categories across multiple venders. She also insured customer satisfaction through regular and consistent communication with clients, account teams, and internal partners. This was largely a computer based sedentary position. The Petitioner began working for the Respondent in 2008.

The Petitioner testified she was entitled to two break periods during the day, in addition to a one half hour lunch period. The two 15 minute breaks were broken down into one break in the morning, and one break in the afternoon. There were no restrictions given by the Respondent as to where or how the employees could take their 15 minute breaks. The Petitioner testified that employees of the Respondent would leave the Respondent's place of business during their breaks and were free to do so without punishment or admonition by the Respondent.

The Petitioner testified that she would regularly leave the Respondent's place of business and go outside to the public sidewalks or walkways for her break and walk with a co-worker. Petitioner testified that her job was stressful and that she wanted to get outside and get some fresh air to clear her mind to focus on the remainder of her tasks for the rest of the day.

On June 6, 2012 the Petitioner was walking with a co-worker outside on a public sidewalk, approximately three blocks from the Respondent's location. The Respondent did not own, maintain, or in any other way control the condition of the sidewalk where the Petitioner was walking. Petitioner testified she tripped on a raised portion of the sidewalk and fell to her hands and knees, injuring her right elbow.

On the date of injury Petitioner presented to Procter First Care complaining of a ground level fall with injury. She complained of pain to the right elbow and forearm. X-rays revealed a possible occult fracture in the right elbow. (Px.3)

***5** On the day following the accident, Petitioner sent an e-mail to her supervisor indicating she had fractured her elbow and needed to see an orthopedic doctor. (Rx. 10)

Petitioner came under the care of Dr. Maxey at Great Plains Orthopedics. She underwent an MRI on August 9, 2012. Petitioner returned to Dr. Maxey on August 15, 2012. He interpreted the MRI to show an impact fracture of the lateral humeral condyle with some edema and a strain of the radial collateral ligament. The doctor suggested working on active extension of the elbow and return to see him in six weeks. (Px.5)

On November 14, 2012 the Petitioner was walking with a co-worker outside on a public sidewalk, across the street from the Respondent's location. The Respondent did not own, maintain, or in any other way control the condition of the sidewalk where the Petitioner was walking. The Petitioner testified she fell on the sidewalk, and did not recall why she fell or what caused her to fall.

The day after the accident, Petitioner sent an e-mail to her supervisor, Deb Monge. The e-mail indicates the Petitioner was going to see her doctor over the lunch break as she fell yesterday on a walk and may have re-injured her arm (Rx.4)

The Petitioner followed-up with Dr. Maxey on November 20, 2012. Dr. Maxey noted that she was doing much better and then she had another fall landing on the right elbow about a week ago. The Petitioner stated her elbow did not feel as bad as it did the first time she injured it and felt that she had more mild pain at this time. X-rays were taken on November 15, 2012 and Dr. Maxey noted although no fracture was evident there was a small effusion and there was concern there could be a non-displaced elbow fracture. He recommended supportive care and treat her elbow as a contusion with active range of motion and she could be seen back in the office to repeat her exam and x-rays in about one month (Px.5)

The Petitioner testified that she was called back to work for Mitsubishi Corporation in March of 2013 and was pursuing that avenue when she followed-up with Dr. Maxey on April 5, 2013. Dr. Maxey's records state she had not followed-up since last fall when she was seen after injuring her elbow. X-rays were taken that showed heterotopic ossification at the joint line in the lateral compartment of the elbow. Dr. Maxey wanted her to see Dr. Rashid to see if resection of the heterotopic ossification would be necessary, otherwise she could see Dr. Maxey as needed. (Px.5)

The Petitioner was seen by Dr. Mary Elizabeth Rashid on April 9, 2013. The history provided shows that the Petitioner possibly sustained a right lateral humeral condyle fracture that was minimally displaced and radial head fracture. She had elbow fractures in both June and November. Her main complaint was pain in the elbow as well as decreased range of motion and the Petitioner was concerned because she was going back to work at the end of April and she was concerned she would not be able to perform her work duties (Px.5)

***6** Dr. Rashid reviewed the imaging studies including the x-rays aha the MRI which showed some heterotapic ossification along the lateral aspect of the elbow in the collateral ligaments. Otherwise she had well healed fractures. Dr. Rashid's assessment was a 50 year old right hand female status post right lateral humeral condyle fracture and radial head fracture who had decreased range of motion, heterotopic ossification on the lateral aspect of her elbow and some pain. She has never done any therapy. Dr. Rashid felt that the Petition would make some gains with therapy and her pain could be relieved with a corticosteroid injection which she wanted to consider. She was to be seen back in three weeks (Px.5)

The Petitioner returned to Dr. Rashid on April 26, 2013 and underwent a corticosteroid injection (Px.5) She had still not had the physical therapy that was recommended. The Petitioner testified in June-of 2013, she ended her employment relationship with Respondent and began working for another advertising agency group.

The Petitioner had no additional treatment until January 28, 2014. On that date she was seen by Dr. Rashid who noted that she had a corticosteroid injection in April of 2013 that seemed to help her pain. She stated her elbow went out over the weekend and she had a significant amount of pain. X-rays were performed of the right wrist what showed no widening at the DRUJ and she was slightly ulnar positive by 2 mm otherwise no abnormalities. Elbow x-rays were also taken which were interpreted to show good alignment of the radiocapitellar joint and some heterotopic ossification along the lateral aspect of the elbow. Dr. Rashid's assessment was a sensation of relative instability in the right elbow when performing heavy duty activities. She did not seem to have a medical collateral ligament tear on the MRI that was performed a few years ago and she

is not apprehensive, and does not have instability on the lateral pivot shift test (Px.5)

Dr. Rashid recommended another MRI to evaluate this including the right wrist to evaluate the TFCC as well as MRI of the forearm to see if the interosseous membrane between the radius and ulna is intact.

The Petitioner had an MRI of the right wrist and MRI of the right forearm on February 11, 2014. The radiologist's impression was a triangular fibrocartilage tear and probable tear of the lateral collateral ligament complex in the right elbow. (Px.5)

The Petitioner followed-up with Dr. Rashid at Great Plains Orthopedics on February 21, 2014. The MRI was reviewed and the diagnosis was a right lateral collateral tear of the right elbow. Dr. Rashid recommended therapy to work on strengthening and surgical care would be a last resort as the Petitioner was stable on exam when she was examined the last time (Px.5).

***7** The Petitioner followed-up with Dr. Rashid on April 11, 2014. Petitioner noted feeling of instability and difficulty pushing herself up out of a chair. She has been doing therapy which does not feel like it is improving her symptoms. Dr. Rashid noted that the Petitioner may be a candidate for examination under anesthesia and reconstruction of the lateral collateral ligament as she was not able to create the feeling of instability on examination. Dr. Rashid suggested that she wanted Dr. Garst to see the Petitioner to get his opinion (Px.5)

The Petitioner was seen by Dr. Garst at Great Plains Orthopedics on May 13, 2014. Dr. Garst recalled the episodes of her injuring her elbow a couple years ago which went on to heal but now she has problems with her elbow and has had ever since. She cannot straighten her elbow out all the way. Dr. Garst was not able to elicit instability of the elbow. Dr. Garst felt that she was a good candidate for ligament reconstruction and was going to refer her to the Mayo Clinic otherwise to a different tertiary care center (Px.5) The Petitioner did not receive treatment at the Mayo Clinic, but instead opted to treat at Northwestern University Hospital.

She was first seen by Dr. Matthew Saltzman at Northwestern Medical Foundation on August 21, 2014. Dr. Saltzman reviewed x-rays taken of her elbow which showed a congruent elbow joint. There were multiple calcifications laterally around the epicondyle and around the capitellum as well. There was no obvious fracture or deformity. An MRI from 2012 shows a partial lateral collateral ligament disruption from 2012. Dr. Saltzman recommended a new MRI arthrogram to evaluate for possible complete disruption of her lateral ligament complex (Px.6)

An MRI was performed on August 21, 2014 that showed a lull thickness tear of the lateral collateral ligament which was old, thickening of the common extensor tendon origin which was also irregular and partially avulsed which was chronic, thin lateral half of the articular cartilage, irregular and demonstrated fall-thickness cartilage loss in the capitellum, a 6 x 12 mm loose body in the olecranon fossa and a first degree strain of the brachialis and pronator teres and ulnar collateral ligament tendinosis (Px.7)

Petitioner followed-up with Dr. Saltzman on September 2, 2014. The treatment plan was decided to be a surgical treatment consisting of an arthrotomy and evaluation of the radial head and capitellum and removal of the loose body and lateral collateral ligament with reconstruction with allograft tendon (Px.6).

Petitioner underwent surgery by Dr. Saltzman on November 21, 2014. The postoperative diagnoses were posterior rotary instability of the elbow, complete lateral collateral disruption, and chronic postural lateral elbow instability. Dr. Saltzman performed a right open lateral collateral ligament reconstruction in the right elbow, right elbow harvesting of palmaris longus autograft, right lateral capsular repair, and right elbow examination under anesthesia with inter-operative fluoroscopy (Px.6)

***8** Petitioner followed-up with Dr. Saltzman on December 9, 2014 for her first postoperative appointment. Dr. Saltzman's assessment was a 53 year old status post LCL reconstruction with palmaris longus autograft who was doing well. She should continue to work on range of motion with her forearm in a pronated position. She was given a referral for formal physical therapy and he did not want her lifting more than five pounds with the hand until she was seen back in one month. She was having minimal pain (Px.6)

Petitioner was last seen by Dr. Saltzman on January 20, 2015 two months status post lateral collateral reconstruction with

palmaris longus autograft. She had some erythema and drainage from the harvesting site and has been on Keflex and now reports no erythema or drainage for the last several days. Dr. Saltzman's assessment was a 53 year old had a likely stitch abscess from a palmaris longus harvesting site but there were no signs of active infection. Her elbow felt stable and she was very happy with the result. Her range of motion was coming along and she would be seen back in two months unless she develops problems (Px.6) Petitioner testified that she has not seen Dr. Saltzman or had any other medical treatment to her right upper extremity since January 20, 2015.

The Petitioner is claiming one week of TTD benefits from the date of surgery of November 21, 2014 through November 28, 2014.

CONCLUSIONS

Issue (C): Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
In a workers' compensation case, the claimant has the burden of establishing by a preponderance of the evidence that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223, 38 Ill. Dec. 133 (1980). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483, 546 N.E.2d 603, 605, 137 Ill. Dec. 658 (1989). "In the course of" the employment refers to the time, place, and circumstances under which the claimant is injured. *Scheffler Greenhouses, Inc. v. Industrial Comm'n*, 66 Ill.2d 361, 366.67, 362 N.E.2d 325, 327, 5 Ill. Dec. 854 (1977).

"Arising out of" the employment refers to the origin or cause of the claimant's injury. *Sishro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 672, 278 Ill. Dec. 70 (2003). An accident arises out of one's employment if its origin is in some risk connected with or incidental to the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58, 541 N.E.2d 665, 667, 133 Ill. Dec. 454 (1989). "Typically, an injury arises out of one's employment if, at the time of the occurrence, the employee was performing acts he was instructed to perform by his employer, acts which he had a common law or statutory duty to perform, or acts which the employee might reasonably be expected to perform incident to his assigned duties." *Id.*, 129 Ill. 2d at 58, 541 N.E.2d at 667. "A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties." *Id.*, 129 Ill. 2d at 58, 541 N.E.2d at 667.

***9** There are three categoxies of risk to which an employee may be exposed: (1) risks distinctly associated with employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162, 731 N.E.2d 795, 806, 247 Ill. Dec. 22 (2000). Injuries resulting 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. *Id.*, 314 Ill. App. 3d at 163, 731 N.E.2d at 806-07. Such an increased risk may be either qualitative, such as some aspect of the 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. *Potenzo v. Illinois Workers' Compensation Comm'n*, 378 Ill. App. 3d 113, 117, 881 N.E.2d 523, 527, 317 Ill. Dec. 355 (2007).

On June 6, 2012 Petitioner was taking a walk, which was her usual routine during her regularly-scheduled break time. Petitioner testified that she takes walks to relieve stress and clear her mind so she could focus on her tasks for the rest of the day. In this case Petitioner had ventured off the employer's prexnises. Petitioner was walking with a co-worker outside on a public sidewalk, approximately three blocks from the Respondent's location. The Respondent did not own, maintain, or in any other way control the condition of the sidewalk where the Petitioner was walking. Petitioner testified she tripped on a raised portion of the sidewalk and fell to her hands and knees, injuring her right elbow.

On November 14, 2012 the Petitioner was again walking with a co-worker outside on a public sidewalk, across the street from the Respondent's location. The Respondent did.not own, maintain, or in any other way control the condition of the sidewalk where the Petitioner was walking. The Petitioner testified she fell on the sidewalk, and did not recall why she fell or what caused her to fall.

The risk encountered in these instances was a neutral risk. Although Petitioner took walks frequently during her break periods, she was in no way required to do so. The Arbitrator concludes the risk to which Petitioner was exposed is one to

which the public at large was also exposed and that to the extent that Petitioner was exposed to this risk more frequently than some members of the public at large, the frequency was determined by Petitioner herself. Therefore, the Arbitrator finds the Petitioner's accident did not arise out of her employment with the Respondent.

"A compensable injury occurs in the course of employment when it is sustained while a claimant is at work or while he performs reasonable activities in conjunction with his employment." *Wise v. Industrial Comm'n*, 54 Ill. 2d 138, 142, 295 N.E.2d 459, 461 (1973). "If the injury occurs within the time 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, the injury is deemed to have occurred in the course of employment." *Eagle Discount Supermarket v. Industrial Comm'n*, 82 Ill.2d 331, 338 (1980) (citation omitted). *Eagle Discount Supermarket* is one of a series of cases which involve injuries sustained on lunch hours or breaks. The Court in *Eagle Discount Supermarket* went on to state:
***10** In the lunch hour cases, the most critical factor in determining whether the accident arose out of and in the course of employment is the location of the occurrence. Thus, where the employee sustains an injury during the lunch break and is still on the employer's premises, the act of procuring lunch has been held to be reasonably incidental to the employment.

Since eating is deemed to be an act of personal comfort, the personal comfort doctrine has been applied to cases involving lunchtime injuries. Under the personal comfort doctrine, the course of employment is not considered broken by certain acts relating to the personal comfort of the employee. Other acts during a break time in the employment besides the act of eating have also been held to be acts of personal comfort. (See, e.g., *Sparks Milling Co. v. Industrial Com.* (1920), 293 Ill. 350 (getting fresh air); *Union Starch v. Industrial Com.* (1974). 56 Ill. 2d 272 (seeking relief from heat); *Scheffler Greenhouses, Inc. v. Industrial Com.* (1977), 66 Ill. 2d 361 (seeking relief from heat and humidity); *Chicago Extruded. Metals v. Industrial Com.* (1979), 77 Ill. 2d 81 (showering in locker room provided by employer).) *Id.* at 339-40 (citations omitted, emphasis added)

In these cases, however the injuries occurred on the employers premises. In this case Petitioner's falls, by her own admission did not occur on Respondent's premises. Petitioner testified she went on walks during her break periods in order to get outside and get some fresh air to clear her mind to focus on the remainder of her tasks for the rest of the day. Although this may be deemed an activity for her personal comfort, the injury occurred not on the Respondent's premises, but on a public sidewalk outside of Respondent's premises that Respondent did not own, maintain or control. Therefore, the Arbitrator finds the "personal comfort" doctrine does not apply and concludes Petitioner's accident did not occur in the course of her employment with the Respondent.

Based upon the foregoing and the record taken as a whole, the Arbitrator finds Petitioner has failed to sustain her burden of establishing that she sustained an accident which arose out of and in the course of her employment. All other issues are moot. Benefits are, therefore denied.

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