2019 IL App (3d) 180251WC-U

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

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Appellate Court of Illinois, Third District,
WORKERS' COMPENSATION COMMISSION DIVISION.

Cher Smith, Appellant,
v.
The ILLINOIS WORKERS' COMPENSATION COMMISSION et al. (Manhattan Park District, Appellee).

NO. 3-18-0251WC
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FILED January 8, 2019

Appeal from Circuit Court of Will County, No. 17MR2144, Honorable John C. Anderson, Judge Presiding.

ORDER

JUSTICE CAVANAGH delivered the judgment of the court.

***1** ¶ 1 *Held*: The Commission's finding that claimant failed to prove that her injury arose out of her employment was against the manifest weight of the evidence and it committed error in denying claimant compensation under the Act.

¶ 2 On March 25, 2011, claimant, Cher Smith, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). She sought benefits from her employer, Manhattan Park District (Park District), claiming she injured her right knee and right ankle on December 13, 2010, in a work-related accident when she slipped and fell in a Park District owned parking lot on the way to her vehicle at the end of her work day. Following a hearing, the arbitrator found claimant had proved that the accidental injury she sustained arose out of and in the course of employment. The arbitrator awarded her benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) reversed the arbitrator's decision. On judicial review, the Will County circuit court affirmed the Commission's decision, concluding it was not against the manifest weight of the evidence. Claimant appeals, arguing the Commission's decision that she failed to prove her accidental injury arose out of her employment was against the manifest weight of the evidence. We reverse and reinstate the arbitrator's award of benefits.

¶ 3 I. BACKGROUND

¶ 4 On February 8, 2016, the arbitration hearing was conducted. Claimant and her supervisor testified. Claimant said that, in March 2007, she began working for the Park District as a receptionist and was promoted to program coordinator approximately one year prior to the hearing. On December 13, 2010, a "very snowy" day, at approximately 4 p.m. at the end of her work day, claimant walked to her vehicle in the adjacent parking lot. Claimant said the superintendent had removed the snow prior to the start of the work day. She presumed he had salted the area as well. She said she was walking carefully to her car, as it had been snowing all day. As she reached her driver's side door handle, she fell "forward on both knees and then down real hard squishing the legs underneath [her] bottom that way." She hollered out. Vicki Pacewick (a coworker) and Julie Popp (her supervisor) responded. They called an ambulance. Claimant said the paramedics were also sliding around in the parking lot, and they had to brace themselves between cars to get claimant off the ground. The ambulance took her to the emergency room (ER) at Silver Cross Hospital.

¶ 5 Claimant explained that her office, the Park District administrative office, was housed in an old farmhouse that sat within what was now Gustafson Park. The administrative office was adjacent to a driveway, which had been widened on one end to allow for nine parking spaces. Her supervisor told her to park in one of those spaces. These nine spaces were not designated, as either members of the general public or the eight administrative employees could park in the spaces. The lot was owned and maintained by the Park District. Approximately one

block away, there was a 40-space parking lot where people would generally park when going to Gustafson Park or the program center. Parking in either lot was basically first-come, first-served. Claimant parked in one of the nine spots in the adjacent driveway/parking lot on a daily basis.

***2** ¶ 6 When she fell, claimant said she immediately felt pain in her right knee and right foot. She thought she had "broke something." X-rays taken at Silver Cross revealed a right knee sprain and a right ankle sprain. The ER physician, Dr. Julie Iandoli, (1) recommended claimant utilize a walker for mobility, (2) prescribed naproxen and Norco, and (3) recommended she follow up with Dr. Bradley Dworsky, an orthopedist. Claimant missed two days of work with no other restrictions or required accommodations.

¶ 7 Claimant followed up with Dr. Dworsky in March 2011. He performed an MRI and recommended arthroscopic surgery to repair the lateral tear in the back of her knee. Dr. Dworsky's official diagnosis was a "medial meniscal tear with preexisting degenerate joint disease of that right knee." Claimant chose not to have surgery. She treated her "off and on" right-knee symptoms with anti-inflammatory medication. She had no further problems with her right ankle. In 2005, she had her left knee replaced, so she continued to follow up with Dr. William Earman, the orthopedic doctor who performed that surgery. At a June 2011 follow-up visit for her left knee, she mentioned the injury to her right knee to Dr. Earman. According to Dr. Earman's notes, her right-knee symptoms had improved. In fact, claimant admitted she had no recurring consistent problems with her right knee.

¶ 8 Julie Popp, the executive director of the Park District and claimant's supervisor, testified that the snow had been cleared from the driveway that day by Park District staff. She also said the staff generally used salt or another agent to melt the ice. When counsel asked when the staff had cleared the driveway and parking lot, Popp said "probably [in the] morning before we attend[ed] work."

¶ 9 Claimant presented her medical records, medical bills, and photographs of the parking lot as exhibits.

¶ 10 On May 25, 2016 (a corrected decision was filed on June 10, 2016, to correct a scrivener's error), the arbitrator issued her decision in the matter. She found claimant sustained an accident on December 13, 2010, that arose out of and in the course of her employment. In particular, the arbitrator found (1) the Park District owned and maintained the lot where claimant fell, (2) the fall was not precipitated by a natural accumulation of ice and snow as the Park District had plowed and salted the parking lot, (3) claimant was exposed to a risk greater than that of the general public, and (4) claimant suffered a torn lateral meniscus which required arthroscopic surgery that had not been performed. Claimant's condition remained.

¶ 11 The arbitrator ordered the Park District to pay $3,151.93 in claimant's unpaid medical bills and $253 per week for 32.25 weeks for the 15% loss of use of her right leg in permanent partial disability.

¶ 12 On July 21, 2017, the Commission reversed the arbitrator's decision, finding that because the parking lot was open to and used by members of the general public, claimant, as an employee, was not exposed to any greater risk. It further found "the accumulation of snow in the parking lot represented a natural accumulation as there was no evidence that [the Park District] created or contributed to a hazard." Thus, the Commission found, claimant's injury did not arise out of her employment. On April 5, 2018, the circuit court of Will County confirmed the Commission.

¶ 13 This appeal followed.

¶ 14 II. ANALYSIS

¶ 15 On appeal, claimant argues the Commission erred in finding she failed to prove a work-related accident. She maintains she was injured in an accident arising out of and in the course of her employment solely due to the fact her injury occurred on the employer's premises due to a dangerous or hazardous condition.

***3** ¶ 16 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.* A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his or her duties. *Caterpillar Tractor*

Co. v. Industrial Comm'n, 129 Ill. 2d 52, 58 (1989).

¶ 17 However, a risk-analysis is unnecessary if the injury occurred on premises due to an unsafe or hazardous condition. Our supreme court has held that accidental injuries sustained on the employer's premises within a reasonable time before or after work arise " 'in the course of' " employment. *Archer Daniels Midland Co. v. Industrial Comm'n*, 91 Ill. 2d 210, 215 (1990) (quoting *Rogers v. Industrial Comm'n*, 83 Ill. 2d 221, 223 (1980)). Further, where the injury was due to the dangerous condition of the employer's premises, courts have consistently approved an award of compensation. *Id.* at 216. See also *Hiram Walker & Sons, Inc. v. Industrial Comm'n*, 41 Ill. 2d 429 (1968) (holding that claimant's fall in employer's ice-covered parking lot was compensable); *Carr v. Industrial Comm'n*, 26 Ill. 2d 347 (1962) (same); *De Hoyos v. Industrial Commission*, 26 Ill. 2d 110 (1962) (same); *Caterpillar Tractor Co v. Industrial Comm'n*, 129 Ill. 2d 52, 62 (1989) (suggesting that an injury is causally related to the employment if the injury occurs "as a direct result of a hazardous condition on the employer's premises"); *Mores-Harvey v. Industrial Comm'n*, 345 Ill. App. 3d 1034, 1040 (2004) ("The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim."); *Suter v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 130049WC, ¶ 40 (where the claimant slipped on ice in a parking lot furnished by her employer shortly after she arrived at work, the claimant was entitled to benefits under the Act "as a matter of law").

¶ 18 In other words, the fact that this parking lot was also used by the general public is immaterial to the issue of compensability because claimant's injury was caused by a hazardous condition on the employer's premises. (It was undisputed during the hearing that the driveway/parking lot where claimant fell was owned and maintained by the employer.) As we noted in *Mores-Harvey*, 345 Ill. App. 3d at 1040:

> "[w]hether a parking lot is used primarily by employees or by the general public, the proper inquiry is whether the employer maintains and provides the lot for its employees' use. If this is the case, then the lot constitutes part of the employer's premises. *The presence of a hazardous condition on the employer's premises that causes a claimant's injury supports the finding of a compensable claim.*" (Emphasis added.)

See also *Chicago Tribune Co. v. Industrial Comm'n*, 136 Ill. App. 3d 260, 264 (1985) (affirming award of benefits for claimant who was injured while walking through a gallery owned by the employer which claimant was required to traverse in order to get to her work station even though the gallery was open to the general public, and stating that "[i]t is difficult to see how the [employer] can escape liability by exposing the public to the same risks encountered by its employees").

***4** ¶ 19 The same reasoning applies here. If the employer allows both its employees and members of the general public to use the parking lot, and contemplates that its employees will traverse the parking lot, a hazardous condition on the parking lot that causes a claimant's injury is compensable, regardless of whether the employer restricts or dictates its employees' use of the lot. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40. The hazardous condition of the employer's premises renders the risk of injury incidental to employment without having to prove that she was exposed to the risk of that hazard to a greater extent than are members of the general public. *Archer Daniels Midland*, 91 Ill. 2d at 216; *Mores-Harvey*, 345 Ill. App. 3d at 1040; *Suter*, 2013 IL App (4th) 130049WC, ¶ 40.

¶ 20 The key factors that guide our decision in this case are as follows: (1) claimant's injury occurred on the employer's premises, and (2) the injury was due to or caused by a dangerous condition or defect on the employer's premises, namely ice and snow. No consideration is given as to whether claimant's risk was any greater than that of the general public.

¶ 21 The Park District relies on *Wal-Mart Stores, Inc. v. Industrial Comm'n*, 326 Ill. App. 3d 438 (2001), for support in its position that injuries sustained by an employee in an ice-covered parking lot were not compensable because the lot was used by both employees and the general public. Because both groups were equally exposed to the hazard, the court concluded the injury did not arise out of employment. *Wal-Mart Stores*, 326 Ill. App. 3d at 445-46. We decline to follow *Wal-Mart Stores* here, finding it distinguishable. In that case, the claimant was not walking to or from her parked car, but was being picked up by a friend. There was no evidence that anyone had asked the claimant's friend to park where she did. Thus, the claimant was, in a sense, not acting under the employer's control or restrictions when she left the store to go on break and so could not have faced any risks to a greater extent than those of the general public.

¶ 22 As cited and quoted above, there is solid precedential authority among Illinois courts supporting the opposite conclusion. And, given this plentiful authority, we believe the distinguishing factors set forth in the *Wal-Mart Stores* case are critical. We therefore decline to follow *Wal-Mart*

Stores. The presence of a hazardous condition on the Park District's premises that caused claimant's fall and resulting injury supports a finding of a compensable claim. As such, we reverse the decisions of the Commission and the circuit court denying claimant benefits and reinstate that portion of the arbitrator's decision awarding benefits.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we reverse the judgment of the circuit court of Will County confirming the Commission's decision, reverse the Commission's decision, and reinstate the Arbitrator's decision in part.

¶ 25 Circuit court reversed; Commission reversed; Arbitrator's decision reinstated in part.

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

All Citations

Not Reported in N.E. Rptr., 2019 IL App (3d) 180251WC-U, 2019 WL 148864