

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/>	Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/>	Rate Adjustment Fund (§8(g))
<input type="checkbox"/>	Second Injury Fund (§8(e)18)
<input type="checkbox"/>	PTD/Fatal denied
<input checked="" type="checkbox"/>	None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Linda Bartolomeo,
Petitioner,

vs.

NO: 07 WC 54543
14 IWCC 1076

Cook County Sheriff's Department,
Respondent.

ORDER OF RECALL UNDER SECTION 19(f)

A Petition under Section 19(f) of the Illinois Workers' Compensation Act to Correct Clerical Error in the Decision of the Commission dated December 12, 2014 having been filed by Petitioner herein. Upon consideration of said Petition, the Commission is of the Opinion that it should be granted.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision and Opinion on Review dated December 12, 2014 is hereby vacated and recalled pursuant to Section 19(f) for clerical errors contained therein.

IT IS FURTHER ORDERED BY THE COMMISSION that a Corrected Decision and Opinion on Review shall be issued simultaneously with this Order.

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.

DATED: MAR 6 - 2015
KWL:vf
42


Kevin W. Lamborn

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

<input type="checkbox"/> Affirm and adopt	<input type="checkbox"/> Injured Workers' Benefit Fund (§4(d))
<input type="checkbox"/> Affirm with changes	<input type="checkbox"/> Rate Adjustment Fund (§8(g))
<input checked="" type="checkbox"/> Reverse	<input type="checkbox"/> Second Injury Fund (§8(e)18)
<input type="checkbox"/> Modify	<input type="checkbox"/> PTD/Fatal denied
	<input checked="" type="checkbox"/> None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Linda Bartolomeo,

Petitioner,

vs.

NO: 07 WC 54543
14 IWCC 1076

Cook County Sheriff's Department,

Respondent.

DECISION AND OPINION ON REMAND

This cause comes before the Commission pursuant to the Rule 23 Order of the Appellate Court, First District, Workers' Compensation Commission Division, entered December 27, 2011.

Respondent appealed the October 31, 2008, 19(b) Decision of Arbitrator Galicia finding that Petitioner sustained accidental injuries arising out of and in the course of her employment with Respondent, that Petitioner's current condition of ill-being is causally related to that accident, that Petitioner was temporarily totally disabled for a period of 31-4/7 weeks, from October 11, 2007, through May 18, 2008, at the rate of \$677.96 per week under Section 8(b), and that Respondent shall pay the sum of \$33,415.39 for necessary medical services as provided in Section 8(a). The issues on review were whether Petitioner sustained an accidental injury arising out of and in the course of her employment with Respondent, whether her current condition of ill-being is casually connected to said accident, medical expenses, and temporary total disability benefits.

The Commission, in a February 11, 2010 Decision, reversed the Decision of the Arbitrator, and found Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment with Respondent, and denied Petitioner's claim for compensation. Petitioner appealed the Commission's Decision and Opinion on Review. In a December 31, 2010 Order, the Circuit Court of Cook County confirmed the Decision of the Commission. Petitioner appealed the Circuit Court's Decision, and the Appellate Court, in a

December 27, 2011 Rule 23 Order, vacated the judgment of the Circuit Court, vacated the Commission Decision, and remanded the matter to the Commission with "instructions to issue an amended decision containing specific findings as to the risk to which the claimant was exposed that caused her to fall."

On November 20, 2012, Judge Margaret Ann Brennan issued an order ordering the Clerk of the Circuit Court of Cook County to transfer the record of the proceedings in this matter back to the Commission.

Pursuant to the Appellate Court's instructions, and upon receipt of the record of proceedings in this matter, the Commission hereby issues an amended decision, containing specific findings as to the risk to which the claimant was exposed that caused her to fall.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Petitioner, a 40 year-old deputy sheriff, testified that on October 11, 2007, she was working front door security at the Rolling Meadows courthouse, screening visitors and their belongings through x-ray machines. Petitioner testified she left her post at 9:15 a.m. to use the washroom located on the lower level, as the washroom on the first floor was being cleaned by the custodians. (T10-12). Petitioner testified she descended the first set of stairs, started to descend the second set of stairs, and then fell. Petitioner admitted the stairs had a yellow non-skid strip on the front of each step, and that there were railings located on each side of the stairway. Petitioner testified she was descending the stairs, on the left side of the stairwell, right next to the railing, while carrying her radio in her left hand, and at that time her right foot became stuck right before the yellow non-skid strip tape on the stair. Petitioner testified she threw her radio to the ground in order to grab the railing, twisted her whole body while attempting to grab the railing, and ended up on her buttocks on the last step. (T12-16).

Petitioner testified that it had to have been candy or gum that her right foot became stuck on while descending the stairs, as she always observed trash on the stairs when she used the stairs in the past. Petitioner suspected the trash she previously observed on the stairs was due to the children visiting the Women in Crisis department on the lower level, or due to the location of the cafeteria and the medical department on the lower level. (T16-18, 45).

The Commission finds Petitioner's testimony as to the cause of her fall is inconsistent with the ambulance report from the date of injury, Petitioner's own written statement provided on the date of injury, the October 11, 2007, supervisor's investigation report, the witness statement, and the initial treating records.

The October 11, 2007, Northwest Community EMS report indicates Petitioner provided a history of twisting her ankle while walking down the stairs, and catching herself on the stairway rail. There is no mention of any substance on the stairs, or of the non-slip strips contributing to her fall. (PX2). Petitioner was then seen in the emergency room of Northwest Community Hospital, at which time she provided a history of slipping on stairs and twisting her ankle. The records contain no reference to Petitioner slipping on a substance or on any non-slip strips.

Petitioner was diagnosed with a left distal fibular fracture, her injury was casted and she was authorized off work. (PX3).

The Employee's Accident Report completed by the Petitioner on the date of injury, upon her return from the emergency room, indicates she was going down the staircase to the basement, and her foot became stuck on the non-slip tape, after which she fell forward onto the railing, and twisted her left ankle. The statement does not mention gum, candy or debris as the cause of her fall. Furthermore, the statement fails to indicate Petitioner was carrying a radio in her hand, inhibiting her ability to grab the railing during her fall. (RX1). Petitioner testified her report was incorrect, that she did not slip on non-slip tape, and that she was so "wasted" from the narcotic medication she received from the hospital that she just wrote down exactly what her union steward dictated to her to write down on the Employee's Accident Report. (T45-48, 51-55). On cross examination Petitioner testified that she "fell on something sticky and went flying down the stairs." (T55). Although Petitioner claims she was unable to comprehend what she was doing at the time she completed the Employee's Accident Report due to the influence of narcotic medication she had received at the hospital, this is contradicted by her admission that the Employee's Accident Report correctly lists the date of accident, her name, date of birth, address, social security number, job title, department, supervisor, supervisor's badge number, as well as the name and phone number of her treating doctor. (T48-51). Although Petitioner testified she was too heavily medicated to comprehend what she was doing at the time she completed the Employee's Accident Report, the Commission is not persuaded by this testimony.

Although Petitioner testified she must have stepped in candy or gum that her right foot became stuck on while descending the stairs, the October 11, 2007, Supervisor's Investigation Report completed by Lieutenant Collins indicates Petitioner provided a different history. The report instead indicates Petitioner provided a history of tripping on a "loose piece of tape." The report further indicates that her accident was witnessed by Officer Mark Kaplan, and that Lieutenant Collins examined the accident area and found no loose tape, deficiencies, or flaws on the stairs. (RX2). The October 17, 2007, witness statement provided by Officer Mark Kaplan indicates that as he was approaching the lower level staircase from below, he observed Petitioner catch the sole of her shoe on the non-slip strip on the 4th or 5th step from the bottom, lose her footing, and fall. In addition to the witness statement, a memorandum signed by Officer Kaplan contains the same history of injury, that Petitioner stumbled on the stairs, lost her balance and twisted her ankle. (RX3). The Commission finds no mention of Petitioner carrying a radio, or of Petitioner slipping on gum, candy or debris, in the Supervisor's Investigation Report, the witness statement, or witness memorandum.

The day after Petitioner's injury, she sought follow up care with her family physician, Dr. Maciorowski. At that time, Petitioner reported she tripped over stairs and broke her ankle. Dr. Maciorowski's records fail to mention gum, candy or debris as a contributing factor to Petitioner's fall. (PX7).

The Commission, after considering the entire record, reverses the Arbitrator's Decision and finds Petitioner failed to prove she sustained accidental injuries arising out of and in the course of her employment with Respondent. The purpose of the Act is to protect employees

from risks and hazards that are peculiar to the nature of the work they are employed to do. Illinois Bell Telephone Co. v. Industrial Commission, 131 Ill.2d 478, 483(1989). It is axiomatic that an injury is compensable under the Act only if it "arises out of" and occurs "in the course of" a claimant's employment. Illinois Bell Telephone Co., 131 Ill.2d at 483; Caterpillar Tractor Co. v. Industrial Commission, 129 Ill.2d 52, 57-58 (1989). Petitioner must prove both by a preponderance of the evidence. First Cash Financial Services v. Industrial Commission, 367 Ill. App. 3d 102, 105(2006). In the case at bar, the parties agree that Petitioner sustained injuries in the course of his employment. The issue presented is whether the injuries also "arose out of" Petitioner's employment with Respondent.

"Arising out of" employment pertains to the origin or cause of an employee's injury. First Cash Financial Services v. Industrial Commission, 367 Ill. App.3d 102 (2006). In order to determine whether an employee's injury arose out of her employment, the risk of injury must first be categorized. There are three categories of risk an employee may be exposed to: (1) risks distinctly associated with the employment; (2) risks personal to the employee; and (3) neutral risks which have no particular employment or personal characteristics. Compensation for neutral risks depends upon whether claimant was exposed to a risk of injury to an extent greater than to which the general public is exposed. Illinois Institute of Technology Research Institute v. Illinois Industrial Commission, 314 Ill.App.3d 149 (1st Dist. 2007).

The mere fact that an incident occurred on the premises of the employer is not sufficient evidence to prove that an accident arose out of the employment. Builders Square v. Industrial Commission, 339 Ill.App.3d 1006, 110-111, 791 Ill.Dec. 897(2003). Illinois has rejected the doctrine of positional risk and the petitioner bears the burden of proving that there was an increased risk caused by the employment. Oldham v. Industrial Commission, 139 Ill.App.3d 594(1985).

The Commission specifically finds that Petitioner was exposed to a neutral risk of traversing stairs used by general public, of no particular employment or personal characteristics, to which the general public is equally exposed, relying on First Cash Financial Services v. Industrial Commission, 367 Ill.App.3d 102, 853 N.E. 2d 799, 304 Ill.Dec. 722 (2006), and relying on Illinois Consolidated Telephone Co v. IC, 314 Ill.App.3d 347(2000).

To obtain compensation, Petitioner must establish facts to show that the conditions or nature of her employment increased this neutral risk of falling beyond that to which anyone else would be exposed. Petitioner failed to prove an increased risk due to her employment. Although Petitioner testified gum, candy or debris on the stairs contributed to her fall down the stairs, and that her two-way radio in her left hand also contributed to her falling, the ambulance report, Petitioner's own accident report, the statements of Petitioner's supervisor and the co-worker who witnessed the fall, as well as the initial treating records, strongly suggest Petitioner fall on the stairs was as a result of a neutral risk to which the general public was equally exposed. The Commission finds Petitioner's testimony as to the cause of her fall to be less than credible. Instead the Commission finds the record indicates Petitioner's fall was caused either by her twisting her ankle and slipping, or by her mis-stepping and slipping down the stairs.

The Commission, relying on First Cash Financial Services v. Industrial Commission, 367 Ill.App.3d 102, 853 N.E. 2d 799, 304 Ill.Dec. 722 (2006), finds no reasonable certainty that Petitioner's injuries stemmed from a risk associated with her employment. Although Petitioner speculated that she slipped on gum, candy, or debris, it is equally possible to infer that the stairs were free of any debris. There is no other evidence in the record to support Petitioner's speculation as to the cause of her fall. Petitioner fell while using stairs used on an unlimited basis by the general public, and the record further indicates there was also access to the lower level via an escalator. Petitioner was not providing building surveillance, requiring her to go up and down stairs all day, but instead traveling down to the lower level as the bathroom on the floor she was working on was being serviced at that particular time of the day.

In Illinois Consolidated Telephone, the Court found a claimant was exposed to greater risk than then general public while descending stairs, as it was sole means, seeking personal comfort, and furthermore that it was not unreasonable for the Commission to infer that the accident was attributable to worn stair treads, lack of handrail or landing, or slipperiness of the landing. However, in the matter herein: the stairs were not the sole means as an escalator was available; there was no evidence of worn stair treads, defect, or slipperiness of stairs or landing; there was no evidence of a lack of a handrail; and, there was no evidence to support Petitioner's testimony about radio in her hand contributing to her injury. Petitioner repeatedly denied at hearing that she slipped on non-slip tape. Although Petitioner testified that she thought she slipped on gum, candy, or debris, it is equally possible to infer that the stairs were free of any debris. There is no other evidence in the record to support Petitioner's speculation as to the cause of her fall. Petitioner claimed her fall was also a result of her carrying a radio in her left hand which inhibited her ability to grab the railing, but the Commission finds nothing at all in any of the medical records, investigation reports, witness statements, ambulance or ER reports to support Petitioner's testimony about a radio contributing to her injuries. Petitioner fell while using stairs used by the general public. Petitioner was not providing building surveillance, requiring her to go up and down stairs all day, but instead traveling down to the lower level as the bathroom on the floor she was working on was being serviced at that particular time of the day. There was no credible evidence the stairs were defective, contained debris or that the non-slip strip was defective and contributed to her twisting her ankle and falling. There also was no credible evidence to suggest Petitioner's fall was contributed to by her carrying a two way radio in her left hand while descending the stairs. Instead, Petitioner merely mis-stepped while descending the stairs, twisted her ankle, and lost her balance.

In Anderegg v. Kesler, Garman, Brouger & Townsley, 12 IWCC 1070, the Commission found that a claimant failed to prove she sustained accidental injuries arising out of and in course of her employment. The Commission found that the claimant failed to prove she was exposed to a neutral risk not common to the general public. The claimant was bringing some items she baked into the office, when she entered the building through an employee entrance, walked toward the stairs when some items slipped, and as she attempted to catch the container she lost her balance and fell. She testified that her toe struck a metal edge located at the end of the landing as she fell. She petitioner fell onto the hallway and suffered a fractured humerus. The Commission found that her testimony illustrated that she lost her balance and began to fall as she attempted to catch a plastic container which had slid off of another container, and that although

the petitioner testified that her toe struck the edge strip at the end of the landing, there was no evidence that the edge strip was defective or otherwise caused an increased risk to her. The Commission concluded there was no evidence that the edge strip or the stairway created an increased risk beyond that to which the general public was exposed.

The primary issue is whether or not Petitioner sustained an accidental injury that arose out of her employment by Respondent on October 11, 2007, whether or not the employment was a causative factor. The Arbitrator concluded Petitioner was exposed to a greater risk than that of the general public due to the fact that she used the stairs to get to the bathroom, and that an even greater risk was created if debris on the stairway caused her foot to get stuck and caused her to fall. The Commission finds no support for the Arbitrator's conclusion that the fact an employee/claimant uses stairs to get to a bathroom automatically exposes them to a greater risk than that of the general public. This Commission finds that Petitioner was not exposed to this staircase and the risk of fall to a greater degree than the general public. The staircase was not peculiar to the work environment and no evidence seems to exist that she was exposed to staircases to a greater degree than the general public. There also appears to be no defect noted about the staircase in this case.

At the time of hearing, Petitioner testified that she was descending a staircase to the bathroom on the lower-level, and that she fell and injured her left ankle when her right foot became stuck from gum or candy right before a yellow non-skid strip tape on a stair in the stairwell. However, based on the evidence in the record, Petitioner cannot show more than a mere possibility that the stairs had gum or candy on the stair when she fell, and that this was the cause of her fall, and, thus, there is no reasonable certainty that the claimant's injury stemmed from a risk associated with her employment. The Commission notes Petitioner's testimony with respect to how the accident occurred was significantly different from the three other histories she provided during the hours that followed the accident - to her employer, to the ambulance provider, and to the Emergency Room personnel. It was not until Petitioner testified at trial that the accident history significantly changed. Petitioner admitted the general public had access to this staircase, and testified she was using the restroom on the lower level at that time only because the one on the second level where she worked was closed for cleaning. The sole witness to the incident, Officer Mark Kaplan, provided a witness statement on the date of injury indicating Petitioner caught the sole of her shoe on the non-slip strip on the 4th or 5th step from the bottom and then lost her footing and fell. The history recorded by the ambulance provider indicates Petitioner's fall down the stairs was a result of her twisting her ankle. The history recorded by the Emergency Room indicates Petitioner provided a history of twisting her ankle and slipping on stairs. Contrary to Petitioner's testimony, the Petitioner's own report of injury completed on the date of injury attributes her slip and fall to defective non-slip tape on the stairs. The witness statement of Lieutenant Collins completed on the date of injury indicates that although Petitioner reported she tripped on a loose piece of tape on the stairs, he examined the accident area and found no loose tape at the site on the stairs, no deficiencies, and no flaws. The Commission finds that the statement of the witness Mark Kaplan, the investigation report of Lieutenant Collins, and the histories of injuries provided by the Petitioner to the ambulance driver, the emergency room, and to the Respondent in the first report of injury, all fail to support Petitioner's testimony that she slipped on the stairs due to the existence of some gum, candy, or

debris, right before the non-slip strip, or that she was carrying and listening to a radio in her left hand at the time of her fall which inhibited her ability to grab the railing. The Commission concludes that while Petitioner was descending the stairs on a break to use the restroom she merely mis-stepped and fell, and that no debris, nor any device in her hand, contributed to her misstep and fall on the stairs.

Based on the above, as well as the credible record, the Commission finds the testimony of Petitioner at trial regarding how the accident occurred inconsistent with the histories given most contemporaneous with the accident. The Commission finds the testimony of the Petitioner not credible. The Commission reasonably infers from the credible evidence that the Petitioner changed the history of the accident in an attempt to make it more likely that the accident would be found compensable.

The Commission finds that Petitioner has failed to prove by a preponderance of the credible evidence that the risk to which Petitioner was exposed, risk of fall from descending stairs, was distinctly associated with her employment or that she was exposed to a risk of injury to a greater extent than that to which the general public was exposed. In the case at bar, the Commission rejects Petitioner's testimony that her foot became stuck in some candy or gum when she slipped on the stairs or that she was carrying a radio that contributed to her injuries, since the first mention of this alleged accident history was not made until Petitioner testified at trial and not supported by any of medical records, witness statements or Petitioner's own accident report. The Commission also notes there was nothing to suggest that Petitioner was hurrying down the stairs, that the lighting in the staircase was defective, that there were any defects on the stairs, or that the staircase she was descending was a staircase that she repeatedly used.

For these reasons, the Commission finds the Petitioner has failed to prove by a preponderance of the credible evidence that she sustained an accidental injury that arose out of and in the course of her employment by Respondent on October 11, 2007. The Commission finds the Petitioner has failed to show that she was exposed to a risk of fall and injury to a greater extent than that to which the general public was exposed while walking down the stairs.


Accordingly, compensation is denied. Furthermore, based upon Petitioner's failure to prove accidental injuries, the Commission finds all other issues are moot.

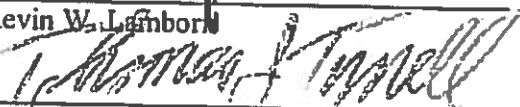
IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed October 31, 2008, is hereby reversed. Compensation is denied.

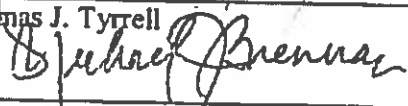
IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

No bond is set by the Commission based upon the denial of compensation herein.

DATED: **MAR 6 - 2015**
KWL/kmt
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Kevin W. Lamborn


Thomas J. Tyrrell


Michael J. Brennan