

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

CARTER, MARLENE

Employee/Petitioner

Case# **11WC026536**

SHERIFFS DEPARTMENT-RECORDS DIVISION

Employer/Respondent

On 1/27/2015, 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 0.07% 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.

A copy of this decision is mailed to the following parties:

1727 LEE, MARK N LAW OFFICE
KEVIN MORRISSON
1101 S SECOND ST
SPRINGFIELD, IL 62704

5354 STEPHEN P KELLY
2710 N KNOXVILLE AVE
PEORIA, IL 61604

STATE OF ILLINOIS)
)SS.
COUNTY OF PEORIA)

- | | |
|-------------------------------------|---------------------------------------|
| <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 checked="" type="checkbox"/> | None of the above |

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Marlene Carter
Employee/Petitioner

Case # 11 WC 26536

v.

Sheriff's Department - Records Division
Employer/Respondent

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 **Anthony C. Erbacci**, Arbitrator of the Commission, in the city of **Peoria**, on **November 21, 2014**. 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

- A. Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
- B. Was there an employee-employer relationship?
- C. Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
- D. What was the date of the accident?
- E. Was timely notice of the accident given to Respondent?
- F. Is Petitioner's current condition of ill-being causally related to the injury?
- G. What were Petitioner's earnings?
- H. What was Petitioner's age at the time of the accident?
- I. What was Petitioner's marital status at the time of the accident?
- 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?
- M. Should penalties or fees be imposed upon Respondent?
- N. Is Respondent due any credit?
- O. Other _____

FINDINGS

On **June 9, 2011**, 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 alleged accident *was* given to Respondent.
In the year preceding the injury, Petitioner earned **\$36, 030.80**; the average weekly wage was **\$692.90**.
On the date of accident, Petitioner was **64** years of age, *single* with **0** dependent children.
Petitioner *has* received all reasonable and necessary medical services.


ORDER

The Arbitrator finds that the Petitioner failed to prove an accidental injury which arose out of her employment with the Respondent. The Petitioner calim for compensation is, therefore, denied.

No benefits are awarded herein.

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.



Arbitrator Anthony C. Erbacci

January 20, 2015
Date

JAN 27 2015

FACTS:

On June 9, 2011 the Petitioner was employed by the Respondent as a records clerk, having been so employed for 19 years. The Petitioner described that her job duties included answering telephones, working at the reception desk, doing data entry, filing, and processing individuals.

The Petitioner testified that on June 9, 2011 she was bringing some warrants and mail from one part of the Respondent's building to another and that she had to traverse the building's lobby in order to complete that task. The Petitioner testified that the lobby was open to and used by the general public and that there were no defects in the lobby floor. The Petitioner testified that she was carrying some files in her left arm and she was rushing, but that there was no particular reason for her to be in a hurry. The Petitioner testified that as she was walking across the lobby, her right toe stuck on something and she fell to the ground striking her left shoulder on the floor and her head on a door. The Petitioner testified that it felt like her foot stuck on something sticky on the floor.

An accident report completed the day of the incident indicates that the Petitioner reported that as she was walking past the soda machine the toe of her shoe stuck to the tile floor as she was walking and she fell with her left shoulder hitting the floor first and then her head hitting a metal door. The Petitioner testified that she fell in the area in front of the soda machines and that, at times, the floor in that area was sticky as a result people spilling soda on the floor. The Petitioner testified that she did not know if the floor was sticky at the time of her fall.

The Petitioner was seen that same day at the emergency room of Methodist Hospital and the history noted was that "while at work at Peoria County Jail, she tripped over her shoe and hit head on a steel door and hit the left shoulder on the floor." X-rays of the Petitioner's left shoulder were reported to demonstrate a fracture in the lateral end of the left clavicle.

The Petitioner followed up with IWIRC on June 10, 2011 where it was noted that the Petitioner reported that "she tripped over her own feet and fell onto the ground" and that "the soles of her rubber shoes got caught on the floor and she fell forward into a steel door". The Petitioner's treatment at IWIRC included work restrictions, pain management and a prescription for an MRI. The Petitioner was discharged from IWIRC on June 16, 2011 with instructions to follow up with an orthopedic surgeon.

On June 13, 2011 the Petitioner underwent the prescribed MRI which was reported to demonstrate an acute fracture of the distal end of the clavicle with edema and partial tear of the coracoclavicular ligament and mild Contusion to the head and neck of the humerus. It was also reported to demonstrate interstitial tear and bursal surface fraying of the supraspinatus tendon, with no evidence of full thickness tear, and a SLAP tear of the glenoid labrum.

On June 27, 2011, the Petitioner came under the care of Dr. Benjamin Holman at

Midwest Orthopaedic Center. Dr. Holman treated the Petitioners fracture in a closed fashion and prescribed work restrictions and physical therapy. The Petitioner continued to follow up at Midwest Orthopaedic Center through her release on October 18, 2011. At the time of her release, the Petitioner was noted to be doing very well without significant pain or difficulties and was advised to increase her activities as tolerated.

The Petitioner testified that the Respondent accommodated her work restrictions throughout the course of her medical treatment. The Petitioner testified that she also treated for her neck and her shoulder with Chiropractor Laura Shelly with whom she was treating for neck complaints prior to her fall at work. The Petitioner testified that she currently has some occasional problems with her left arm when filing and reaching over head.

Assistant Chief Needham testified on behalf of the Respondent. He testified that he was familiar with the area where the Petitioner fell and that the lobby area where the Petitioner fell was regularly traversed by the general public. Assistant Chief Needham also testified that immediately after the Petitioner's fall, he inspected the area of her fall and that there were no defects in the floor and the floor was not sticky.

CONCLUSIONS:

In Support of the Arbitrator's Decision relating to (C.), Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent, the Arbitrator finds and concludes as follows:

It is axiomatic that the Petitioner bears the burden of proving all of the elements of her claim by a preponderance of the credible evidence. In order for an injury to be compensable, it must "arise out of" and "in the course of" the Petitioner's employment. The Arbitrator finds that while the Petitioner here was clearly "in the course of" her employment when she was injured, the Petitioner failed to prove that her injury "arose out of her employment."

In order for an injury to be considered to have arisen out of the employment, it must be determined that the injury arose out of some risk peculiar to the work or a risk to which the employee is exposed to a greater degree than the general public by reason of her employment. A risk is incidental to the employment when it belongs to or is connected with the employment duties. There are three categories of risk to which an employee may be exposed; (1) risks distinctly associated with the employment; (2) personal risks; and (3) neutral risks which have no particular employment or personal characteristics. 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.

In the instant case, the Petitioner was walking through an area which was regularly traversed by the public and which was free of any defect or hazard. The Petitioner testified that there was no defect in the floor where she fell and that she did not know if the floor was

actually sticky at the time of her fall. Assistant Chief Needham testified that he inspected the area where the Petitioner fell immediately after she fell and there was no defect in the floor and the floor was not sticky. The histories noted in the medical records immediately after the Petitioner's fall indicate that the Petitioner reported that she merely she "tripped over her shoe" or "tripped over her own feet".

While the Petitioner testified that she was carrying some papers in her hand at the time of her fall, she did not testify or establish that the papers in any way contributed to her fall. Similarly, while the Petitioner testified that she was walking briskly at the time of the fall she acknowledged that there was no reason that she was hurrying and that she was hurrying at her own accord. There was no evidence presented from which it could be concluded that the Petitioner's brisk pace was in any way in relation to or as a result of her work responsibilities for the Respondent.

The Arbitrator finds that the Petitioner failed to prove that she was exposed to a risk which was peculiar to her employment or a risk greater than that to which the general public is equally exposed.

Based upon the forgoing, and having considered the totality of the credible evidence adduced at hearing, the Arbitrator finds that the Petitioner failed to prove that an accident occurred which arose out of her employment with the Respondent.

Having found that the Petitioner failed to prove that a compensable accident occurred, determination of the remaining disputed issues is moot.

The Petitioner's claim for compensation is denied and no benefits are awarded herein.