

Circuit City Stores, Inc. v. Illinois Workers' Compensation Commission, 391 Ill.App.3d 913 (2d Dist. 2009)

In July, 2009, The Illinois Appellate Court issued its modified decision in Circuit City Stores, Inc. v. Illinois Workers' Compensation Commission, 391 Ill. App. 3d 913 (2d Dist. 2009). The claimant was a 21 year old installation worker for the employer. He sustained an injury to his right hip when he hit a vending machine with his shoulder and fell while helping a co-worker. The co-worker was on a break and had purchased a bag of Fritos from a vending machine. The bag had become stuck in the machine. The co-worker asked the claimant to assist her. The claimant was not on a break at the time. At first he shook the machine from the front and then the side. When this did not work, he positioned himself on the side of the machine took one step, hit the machine with his shoulder, and fell. He sustained a right hip injury involving a fracture of the femoral neck that required surgery.

The claimant filed an Application for Adjustment of Claim. The employer denied benefits on the basis that the accident was not compensable under the Act. At arbitration, the coworker who requested his assistance testified that the claimant took two or three steps before hitting the machine. She testified there was not enough room for him to run at it and that he "just kind of leaped into it." Id. at 925. The co-worker tried to dislodge the product by shaking the machine and was not successful. She admitted that she was purchasing the product.

A store director testified that the claimant's attempt to remove the chips was inappropriate. She was aware that bags of chips became lodged in the machine. The store director testified that when this occurred, she would and would give money to the customer to purchase another bag. The same protocol applied if money was stuck in the machine. She had not seen an employee shake or strike the machine. She had never reprimanded an employee for doing so and had not heard of an employee doing so. She further testified that as to products being stuck, no employee had ever brought such an instance to her attention. The store had no policy prohibiting employees from shaking the machine to dislodge a product. The machine was for customers and the convenience and comfort of employees.

The arbitrator found that the facts were not completely within the personal comfort doctrine but found that the claimant's actions were not so outrageous or unusual because people will jostle vending machines when the product being purchased becomes stuck. The arbitrator found the claim compensable. The Commission affirmed in a 2-1 decision.

In his dissent, Commissioner Basurto noted that the personal comfort doctrine is intended for the claimant's personal comfort. In this case, the claimant was not on a break and he was not the individual purchasing the chips from the vending machine. Commissioner Basurto concluded that to find the accident compensable, the personal

comfort doctrine must be broadened to encompass the personal comfort of third-parties. Following through on that premise, the claimant's actions were unforeseeable and unreasonable.

The importance of written dissent on Commission Review is evident. The circuit court of McHenry County reversed the Commission's decision affirming the Arbitrator. The court's decision was based as a matter of law; finding that the personal comfort doctrine did not apply to co-workers. As a result, the accident was not "in the course of" the employment. The court also found the facts describing mechanism of the accident itself did not meet the manifest weight standard to support the "arising out of" element. The claimant appealed his case to the appellate court.

The court's decision reviewed the personal comfort doctrine. It is critical to consider that this doctrine speaks to the "in the course of" element of accident. Claimants must still show that the injury "arose out of" the employment. The court found that the Commission's decision that the accident arose out of the employment was not contrary to the law. The store availed the machine to the store's customers and employees. The evidence established instances in which products were stuck instead of being dispensed. This defect precipitated the injury *by creating a need for action* to dislodge the bag of Fritos. Therefore, a rational trier of fact could have found the injury originated in a risk incidental to the claimant's employment.

The court did, however, find that the Commission's determination that the personal comfort doctrine applied in this case to establish the "in the course of" requirement was contrary to the law. The doctrine has never been applied, and does not apply, to injuries sustained by an employee while assisting a coworker who is seeking personal comfort. Instead, the court found the "good Samaritan doctrine" satisfied the "in the course of" requirement.

The decision cited a number of cases, and relied primarily on Ace Pest Control Inc. v. Industrial Commission, 32 Ill. 2d 386 (1965), which held that when an employee departs from his or her work duties to aid a third party, the "in the course of" determination hinges on whether the departure was reasonably foreseeable. The court held that the Commission's finding that the claimant's conduct in assisting his coworker was reasonably foreseeable *was not* against the manifest weight of the evidence.

The decision explained that while the cases cited under the Good Samaritan doctrine usually presented more urgent circumstances, they did not involve request for aid from a coworker. In the Circuit City case, what was lacking in urgency was replaced by "familiarity and collegiality". Both the request for assistance and the act of assistance were reasonably foreseeable Circuit City at 923. The court concluded in finding that the claimant's manner in giving aid by hitting or butting the machine after attempts at shaking it failed to dislodge the product did not cross the line of foreseeability so as to take him outside the course of his employment.