
In the Matter of the Compensation of
PAMELA M. HAMILTON, Claimant
ORDER ON REVIEW WCB Case No. 09-06605
Moore & Jensen, Claimant Attorneys
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: *En Banc*; Members Weddell, Langer, Biehl, Lowell, and Herman.

The SAIF Corporation requests review of Administrative Law Judge (ALJ) Donnelly's order that set aside its denial of claimant's injury claim. On review, the issue is course and scope of employment. We reverse.

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," but not the "Findings of Ultimate Fact."

CONCLUSIONS OF LAW AND OPINION

In October 2009, claimant, a cook/cashier, was injured while performing her work duties when she suffered a syncopal (fainting) episode and fell, striking her face on the kitchen's brick floor. It is undisputed that claimant's fall was caused by solely personal (not work-related) reasons. (*See, e.g.*, Exs. 20, 21).

In finding that the injury "arose out of" employment,¹ the ALJ concluded that, although the fall was idiopathic in origin,² claimant's injuries also involved an employment cause (the brick floor) that combined with the personal cause to produce her injuries. Accordingly, the ALJ held that the claim was compensable under the "mixed risk" doctrine.

On review, SAIF argues that this claim involves an idiopathic fall. As such, SAIF contends that a determination as to whether the injury "arose out of employment" should be determined by the "increased danger rule," rather than the "mixed risk" doctrine. SAIF further contends that, applying the "increased danger rule," claimant's injury claim is not compensable. We agree, reasoning as follows.

¹ It is undisputed that claimant's injury occurred in the course of employment.

² As used in this context, the term "idiopathic" means "peculiar to the individual" and not as "arising from an unknown cause." *Phil A. Livesley Co. v. Russ*, 296 Or 25, 27 n 1 (1983); *MacKay v. SAIF*, 60 Or App 536 (1982), *rev den*, 296 Or 120 (1983).

Whether an injury “arises out of” and occurs “in the course of employment” concerns two prongs of a unitary “work connection” inquiry that asks whether the relationship between the injury and the employment has a sufficient nexus such that the injury should be deemed compensable. *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 596 (1997). The requirement that the injury occur “in the course of” the employment relates to the time, place, and circumstances of the injury. *Krushwitz v. McDonald’s Restaurants*, 323 Or 520, 526 (1996). The “arising out of” prong tests the causal link between the worker’s injury and the worker’s employment. *Id.* at 525-26. Both prongs must be satisfied to some degree, but neither is dispositive. *Hayes*, 325 Or at 596.

It is undisputed that the “in the course of” prong has been satisfied. Therefore, we turn to the “arising out of” prong. To satisfy that element, the “causal connection must be linked to a risk connected with the nature of the work or a risk to which the work environment exposes [the] claimant.” *Redman Indus., Inc. v. Lang*, 326 Or 32, 36 (1997); *Halsey Shedd RFPD v. Leopard*, 180 Or App 332, 338 (2002). Risks causing injury to a claimant may generally be categorized as follows: risks “distinctly associated with the employment” are universally compensable; risks “personal to the claimant” are universally noncompensable; and “neutral” risks (*i.e.*, an unexplained fall) are compensable if the conditions of employment put the claimant in a position to be injured. *Phil A. Livesley Co. v. Russ*, 296 Or 25, 29-30 (1983); *Lang*, 326 Or at 36; *1 Larson’s Workers’ Compensation Law* § 4.00, 4-1 (2003). *See also SAIF v. Fortson*, 155 Or App 586, 591-92 (1998) (noting that risk is an important factor in a work-connection analysis).

As we explained in *Theresa A. Graham*, 63 Van Natta ___, (issued this date), the “mixed risk” doctrine is not applicable where, as here, the cause of a workplace fall is solely idiopathic. 63 Van Natta at ___. Rather, in such circumstances, the “increased danger rule” applies. *Id.* at ___. Therefore, we apply the “increased danger rule” in analyzing whether claimant’s injury “arose out of” employment.

The “increased danger rule” was first adopted in *Marshall v. Bob Kimmel Trucking*, 109 Or App 101 (1991), where the claimant became unconscious for idiopathic reasons while driving a log truck, which resulted in an accident. The court approvingly cited Professor Larson’s treatise on workers’ compensation in reasoning that “[t]he risk of serious injury from any loss of consciousness, of idiopathic origin or not, was greatly increased by the fact that [the] claimant was driving a log truck for his employer’s benefit.” 109 Or App at 104.

We applied the *Marshall* rationale in *Emery A. Reber*, 43 Van Natta 2373 (1991), where the claimant fell, for idiopathic reasons, some five or six feet from the deck of a house to the ground. We concluded that working at such a height, as opposed to ground-level, represented a “substantial employment contribution” to his injury. *Reber*, 43 Van Natta at 2375. Consequently, we applied the “increased danger rule,” and found the claimant’s injury claim compensable.

Consistent with the *Reber* rationale, applying the “substantial employment contribution” standard in previous cases, we have not found an idiopathic, level-floor fall sufficient to satisfy the “increased danger rule” based on the hardness of the floor or ground on which a claimant fell.³ See *Katheryn L. Judd*, 47 Van Natta 1645, 1647 (1995); *Pat Jennings*, 45 Van Natta 1191, 1192 (1993); *Ruben G. Rothe*⁴, 45 Van Natta 369, 371 (1993).⁵ In contrast, a substantial employment contribution has been found in idiopathic-fall-type cases where a claimant: (1) lost consciousness while driving a vehicle (*Marshall*); (2) fell from a height sufficient to augment the risk or extent of harm (*Violet Colhour*, 59 Van Natta 1116, 1120-21 (2007); *Joseph M. Webb*, 53 Van Natta 1579, 1580 (2001); *Reber*, 43 Van Natta at 2375)); or (3) struck a sharp object as a result of the fall (*Cecil A. Green*, 53 Van Natta 664, 667-68 (2001)).⁶ These latter cases are consistent with Professor Larson’s observation that the effects of height, machinery, sharp corners, and moving vehicles have routinely been found to have increased the dangerous effects of idiopathic falls under the “increased danger rule.” See *1 Larson’s* § 9.01[1], 9-2 (2003).

³ We decline SAIF’s requests that we hold, as a matter of law, that the hardness of a floor may never “substantially contribute” to an injury sustained in an idiopathic, level-surface fall. The court has cautioned that “the unitary work-connection test does not supply a mechanical formula for determining whether an injury is compensable,” and that we are to “evaluate those factors in each case to determine whether the circumstances of a claimant’s injuries are sufficiently connected to employment to be compensable.” *Robinson v. Nabisco, Inc.*, 331 Or 178, 185 (2000).

⁴ Although *McTaggart v. Time Warner Cable*, 170 Or App 491 (2000), found that *Rothe* was “incorrect” concerning its application of *Russ* and ORS 656.266, the court did not address our primary holding that the claimant’s fall was “idiopathic,” and not “unexplained,” and that there was no substantial employment contribution to the risk or extent of harm resulting from the idiopathic fall onto a ground-level surface. See 170 Or App at 499 n 8, 499-504; see also *Rothe*, 45 Van Natta at 371.

⁵ Likewise, in *Mariya Khokhlova*, 61 Van Natta 2859, 2861 (2009), we did not find a sufficient employment contribution to the claimant’s injury where she fell onto a carpeted floor without striking any office furniture or other instrumentality of employment. Although *Khokhlova* referenced the “mixed risk” doctrine rather than the applicable “increased danger rule,” its result is consistent with our other “increased danger rule” cases involving falls onto ground-level floors.

⁶ To the extent that *Colhour*, *Green*, and *Webb* were analyzed under a “mixed risk” theory, they are more compatible with an “increased danger” analysis.

Here, this situation is more akin to the cases where the effects of a claimant's idiopathic fall were found insufficient to satisfy a "substantial employment contribution" for purposes of the "increased danger rule." In other words, claimant fell from a standing position onto the ground level floor where she was working. Such circumstances lack the "substantial employment contribution" that has previously been found sufficient to satisfy the "increased danger rule" in the aforementioned cases; *e.g.*, she was not operating a vehicle, she did not fall from a significant height, and she did not strike a sharp object during her fall.

Under such circumstances, we find that claimant's idiopathic fall from a standing position onto the brick floor of her workspace does not meet the substantial employment contribution for satisfaction of the "increased danger rule." Consequently, we conclude that the "arising out of" prong of the work connection test has not been established. Therefore, we hold that claimant's injury claim is not compensable. Accordingly, we reverse.

ORDER

The ALJ's order dated March 15, 2010 is reversed. SAIF's denial is reinstated and upheld. The ALJ's \$6,000 assessed attorney fee award is also reversed.

Entered at Salem, Oregon on April 5, 2011