
In the Matter of the Compensation of
PATCHES J. BRADY, Claimant
WCB Case No. 09-01969
ORDER ON REVIEW
Brian L Pocock, Claimant Attorneys
Sather Byerly & Holloway, Defense Attorneys

Reviewing Panel: Members Biehl, Lowell and Herman.

The self-insured employer requests review of that portion of Administrative Law Judge (ALJ) Smith's order that set aside its denial of claimant's bilateral knee 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."

CONCLUSIONS OF LAW AND OPINION

Claimant, a manager at a fast-food restaurant, was leaving work in January 2009, when she held a door open for two customers. After the customers exited, claimant turned to her right to take a step, but as she did so, she fell forward and struck both of her knees on a concrete surface that was sloped to allow wheelchair access.

Claimant was initially diagnosed with bilateral knee sprains and strains. (Ex. 6). Diagnostic testing revealed osteoarthritic changes in the right knee joint and suspected medial meniscus degeneration. On the left side, some medial compartment degenerative changes and a suspected small tear of the posterior horn of the medial meniscus were detected. (Exs. 8-10).

Claimant filed a claim for the bilateral knee injury, which the employer denied. Claimant requested a hearing.

In setting aside the denial, the ALJ found that claimant's injury arose out of and in the course of her employment. The ALJ first determined that the cause of claimant's fall was entirely "idiopathic" because the medical evidence established that the sole cause of claimant's fall was preexisting bilateral osteoarthritis and that stepping onto the concrete ramp did not contribute to the

accident. In determining that the injury “arose out of” employment, however, the ALJ reasoned that claimant had established compensability under both the “increased danger” rule and the “mixed risk” doctrine. Specifically, the ALJ concluded that the hard concrete ramp on which claimant fell represented an employment risk that materially contributed to her injury. See *Violet Colhour*, 59 Van Natta 1116 (2007); *Cecil A. Green*, 53 Van Natta 664 (2001).

On review, the employer argues that claimant’s employment did not contribute to her fall or increase her risk of injury. It contends that claimant’s fall was entirely “idiopathic”¹ with no employment contribution.² For the following reasons, we find that claimant’s injury did not arise out of her employment.³

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.

As previously noted, 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

¹ In this context, the term “idiopathic” means “peculiar to the individual” and not “arising from an unknown cause.” Idiopathic refers to “an employee’s preexisting physical weakness or disease which contributes to the accident.” *Phil A. Livesley Co. v. Russ*, 296 Or 25, 27 n 1 (1983) (citing 1 Larson, Workmen’s Compensation Law § 12.00).

² The parties do not dispute that claimant’s injury occurred “in the course of” employment. Only the “arising out of” prong of the work-connection test is argued on review.

³ We adopt the ALJ’s reasoning that, even though it was sloped, the concrete ramp did not contribute to the cause of claimant’s fall.

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).

If claimant’s fall was due to both personal and employment reasons, her injury is compensable under the “mixed risk” doctrine. *See Nancy R. Taylor*, 55 Van Natta 1111, 1115 (2003). However, the “mixed risk” doctrine does not apply here because the cause of claimant’s workplace fall is solely idiopathic. Therefore, we apply the “increased danger rule” in analyzing whether claimant’s injury “arose out of” employment.

We recently decided a case involving the “increased danger rule” in *Pamela M. Hamilton*, 63 Van Natta 736 (2011). In *Hamilton*, we found that the claimant’s idiopathic fall from a standing position onto the brick floor of her workspace did not meet the “substantial employment contribution” requirement for satisfaction of the “increased danger rule.” Consequently, we concluded that the “arising out of” prong of the work connection test had not been established and that the claimant’s injury claim was not compensable. 63 Van Natta at 736.

In reaching these conclusions, we first reviewed the evolution of the “increased danger rule” in various court and Board cases. After completing that review, we reasoned that the situation in *Hamilton* was 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, the claimant fell from a standing position onto the ground level floor where she was working. Such circumstances lacked the “substantial employment contribution” that had previously been found sufficient to satisfy the “increased danger rule.” We specifically noted that, unlike the cases where a “substantial employment contribution” had been found for the purposes of applying the “increased danger rule,” claimant was not operating a vehicle and did not fall from a significant height or strike a sharp object during her fall.⁴ *Id.*

⁴ In *Hamilton*, we declined the carrier’s request 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. We noted the court’s admonition that the “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).

Likewise, in this case, the circumstances lack the “substantial employment contribution” that has previously been found sufficient to satisfy the rule: claimant was not operating a vehicle and did not fall from a significant height or strike a sharp object during her fall. As such, 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.” Therefore, as in *Hamilton*, we conclude that there was no substantial employment contribution to claimant’s injury from her work environment.⁵

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 February 22, 2010 is reversed in part and affirmed in part. The employer’s denial is reinstated and upheld. The ALJ’s \$7,000 assessed attorney fee award is also reversed. The remainder of the ALJ’s order is affirmed.

Entered at Salem, Oregon on May 3, 2011

⁵ As we emphasized in *Hamilton*, we are not holding that the hardness of a surface may never “substantially contribute” to an injury sustained in an idiopathic fall. Rather, we have evaluated the factors in this particular case to determine whether the circumstances of claimant’s fall from a standing position onto a sloped concrete surface are such that the injury was sufficiently connected to employment to be compensable. Having completed that evaluation, we do not find a “substantial employment contribution” to claimant’s injury, and, as such, we are not persuaded that there was a sufficient work connection.