
In the Matter of the Compensation of
FRANCES S. LANGE, Claimant
WCB Case No. 13-03454
ORDER ON REVIEW
Alvey Law Group, Claimant Attorneys
John E Snarskis & Assocs, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Kekauoha's order that upheld the insurer's denial of claimant's injury claim. On review, the issue is course and scope of employment.

We adopt and affirm the ALJ's order with the following supplementation to address claimant's argument that her fall at work arose out of her employment.

On April 18, 2013, claimant, a hair stylist, fell at work, fracturing her left femur. She finished a haircut, turned, and fell. (Tr. 12). She does not know why she fell. (Tr. 20; Ex. 3). She does not recall slipping or feeling dizzy or being unstable. (Tr. 12, 15).

On June 17, 2013, the insurer issued a denial, contending that work activity was not the major contributing cause of claimant's condition. (Ex. 13). Claimant requested a hearing.

Prior to the injury, claimant had treated for carotid artery stenosis. (Ex. AA). In June 2011, after an ultrasound procedure showed progressive stenosis in her right carotid artery, Dr. Moser, her neurologist, directed her to consult Dr. Moon, a surgeon. (*Id.*) Dr. Moon recorded a history of intermittent episodes of loss of balance. (Ex. A-1).

In November 2011, claimant fell at home, fracturing her left hip. (Ex. B-2). She had been watching television, stood up, turned, and fell. (Tr. 11). In the emergency room, she stated that her left leg had been "giving out." (Ex. B-2). At the hearing, she testified that she did not know why she fell in November 2011. (Tr. 20).

In December 2011, Dr. Moser's assessment was that claimant's fall did not appear to be related to "TIA or stroke." (Ex. D-1). Dr. Moon stated that it was not clear whether the fall was "truly a hemispheric TIA," but he could not rule it out. (Ex. C-2). He recommended right carotid artery surgery. (*Id.*)

In January 2012, after the surgery, Dr. Moon assessed claimant as doing “quite well.” (Ex. C-3). He noted, however, that she also had severe stenosis in her left carotid artery. (*Id.*) In July 2012, he directed her to return in one year for a bilateral carotid ultrasound. (*Id.*)

Dr. Schwartz, an orthopedic surgeon, had performed surgery with instrumentation to repair claimant’s left hip fracture. (Ex. B-2). Afterward, claimant walked with a limp and wore an orthotic insert in her left shoe. (Tr. 22, 23). She had “balance issues” and used a cane. (Tr. 18). When she returned to work, the employer accommodated her request to remove the floor mat and placed her at the back of the salon, where there was less congestion. (Tr. 8, 17-18).

On August 6, 2013, Dr. Lohman, an orthopedic surgeon, performed an examination at the insurer’s request. (Ex. 14). Dr. Lohman did not believe that personal causes had been eliminated as the cause of the workplace fall. (Ex. 15-1). Specifically, he identified claimant’s vascular/arterial condition and left hip surgery as very likely reasons for the fall. (Ex. 17-2).

In April 2014, Dr. Schwartz opined that claimant’s workplace fall was the major contributing cause of her left femur fracture. (Ex. 21-6). He did not provide an opinion as to the cause of the fall.

The ALJ upheld the insurer’s denial. In doing so, the ALJ found that claimant’s fall was unexplained and idiopathic causes had not been eliminated.¹

On review, claimant contends that idiopathic factors were eliminated. For the following reasons, we do not agree.

To be compensable, an injury must “aris[e] out of and in the course of employment.” ORS 656.005(7)(a). Both the “arising out of” and the “in the course of” elements must be satisfied to some degree. *Krushwitz v. McDonald’s Restaurants*, 323 Or 520, 531 (1996). Whether the injury occurred “in the course of” employment depends on the time, place, and circumstances under which the accident took place. *Norpac Foods, Inc. v. Gilmore*, 318 Or 363, 366 (1994). Whether the injury “arose out of” employment depends on the causal relationship between the injury and the employment. *Id.*

¹ Concluding that claimant had not proved that her injury arose out of employment, the ALJ did not address the insurer’s alternative defense that the injury involves a “combined condition” that was caused in major part by preexisting conditions.

The parties do not dispute that claimant was injured in the course of employment. Therefore, the only issue is whether the injury “arose out of” employment. To establish the “arising out of” 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).

A “truly unexplained” fall is considered to arise out of employment as a matter of law and is compensable, so long as it occurs in the course of employment. *Phil A. Livesley Co. v. Russ*, 296 Or 25, 29-30 (1983); *McTaggart v. Time Warner Cable*, 170 Or App 491, 504 (2000), *rev den*, 331 Or 633 (2001). Whether a fall is “truly unexplained” is a question of fact. A fall will be deemed “truly unexplained” only if the claimant “persuasively eliminates all idiopathic factors of causation.”² See *Russ*, 296 Or at 30; *Blank v. U.S. Bank of Oregon*, 252 Or App 553, 557-58 (2012). A fall is not compensable where it is equally possible that its cause was idiopathic as it was work-related. *Id.* at 558; *Catherine A. Sheldon*, 66 Van Natta 275, 277 (2014).

Here, Dr. Lohman was the only physician that addressed the possible causes of claimant’s workplace fall. He stated that he questioned claimant quite closely as to how and why she fell. (Ex. 15-1). Claimant did not identify a work-related cause. (*Id.*) Claimant did not say that she slipped or tripped or provide any other explanation for her fall. (*Id.*) In considering personal factors that could account for the workplace fall, Dr. Lohman noted that claimant’s description of the fall was essentially identical to that of her prior fall at home. (*Id.*) He also referred to her medical history, specifically the vascular/arterial problem that had been treated only on one side. (*Id.*) He noted that her records also showed “ongoing problems” after her left hip surgery, which could have caused her to fall. (*Id.*) He ultimately concluded that personal factors had not been eliminated as the cause of her workplace fall. (*Id.*)

Claimant presented no affirmative evidence that she fell as a result of work factors. Instead, she asserts that Dr. Lohman did not explain how her arterial/vascular or left hip condition caused her to fall. She contends that he misstated her records, which show that she did quite well after the 2011 surgeries. She also argues that no attending physician attributed her workplace fall to her vascular/arterial or left hip condition. For the following reasons, we conclude that the potential idiopathic causes identified by Dr. Lohman have not been persuasively eliminated.

² As used in this context, “[i]diopathic refers to an employee’s preexisting physical weakness or disease which contributes to the accident.” *Russ*, 296 Or at 27.

Regarding claimant's vascular/arterial condition, Dr. Lohman reported that her description of her fall at work was "essentially identical" to that of her earlier fall at home. (Ex. 15-1). Although Dr. Moser stated that the fall at home did "not appear [to be] related to TIA or stroke," Dr. Moon was unable to rule it out. (Exs. C-2, D). Moreover, Dr. Moon directed claimant to follow-up for her severe left carotid artery stenosis. (Ex. C-3). There is no indication that claimant followed-up before she fell at work. Neither Dr. Moser nor Dr. Moon rebutted Dr. Lohman's opinion that claimant's vascular/arterial condition would have caused her to fall or provided an opinion concerning the cause of her fall.

Turning to claimant's left hip condition, Dr. Schwartz, her orthopedic surgeon, opined that she had done "well" after her left hip surgery. (Ex. 21-6). Yet, claimant testified that she had balance "issues," walked with a limp, wore an orthotic insert in her left shoe, and used a cane. (Tr. 18, 22, 23). Dr. Schwartz did not address the cause of her workplace fall. (Ex. 21-6).

After conducting our review, we find no medical or other evidence that eliminates claimant's arterial/vascular or left hip condition as the cause of her workplace fall. *See Mark A. Ostermiller*, 42 Van Natta 2873, 2877 (1990) (where an injury is unexplained, the claimant has the burden of presenting

affirmative evidence excluding idiopathic factors as the cause of the injury). Accordingly, claimant's fall is not "truly unexplained." Therefore, her injury did not arise out of her employment.³ Consequently, we affirm.

ORDER

The ALJ's order dated August 20, 2014 is affirmed.

Entered at Salem, Oregon on June 2, 2015

³ In her reply brief, claimant argues that her workplace fall was due to factors "distinctly associated with her employment" or that the "mixed risk" doctrine applies to allow compensability. Under the "mixed risk" doctrine, if the employment risk was a contributing factor, the concurrent contribution from a personal risk will not defeat compensability. *See Theresa A. Graham*, 63 Van Natta 740, 744, *recons.*, 63 Van Natta 970 (2011) (where the claimant's syncopal episode was the result of both idiopathic anemia and workplace induced hypothermia, the injury arose out of employment under the "mixed risk" doctrine).

Here, claimant did not know why she fell. (Tr. 20). Moreover, our review finds no "employment risk" contribution to her fall and resulting injuries. Consequently, the "mixed risk" analysis does not apply. *Id.* (the "mixed risk" doctrine applies to situations where a fall is *not* "unexplained" and *both* a personal and employment risk contributed to the cause of a fall or accident).