

In the Matter of the Compensation of  
**BRIDGET D. RIDIMANN, Claimant**  
WCB Case No. 15-00356  
ORDER ON REVIEW  
Daniel J DeNorch, Claimant Attorneys  
Lyons Lederer LLP, Defense Attorneys

Reviewing Panel: Members Curey and Weddell.

The self-insured employer requests review of Administrative Law Judge (ALJ) Lipton's order that set aside its denial of claimant's injury claim for a right knee condition. 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

On August 20, 2014, claimant, a housekeeper, was seated at a stool, "de-linting" surgical towels. When she stood up and walked over to the linen cabinets, her right leg "gave out." (Tr. 4). Claimant caught herself and did not fall. (Tr. 8).

Claimant was seen in the emergency room that day. She told Dr. Shah that she was seated and, as she stood up, her right lower leg "gave out." (Ex. 1-1). Dr. Shah diagnosed a right knee strain. (Ex. 1-2).

On August 25, 2014, claimant saw Dr. Seyer, her family physician. Dr. Seyer documented a painful "varus stress" test and diagnosed a right collateral ligament sprain. (Ex. 4-1).

An October 6, 2014 right knee MRI showed tri-compartment degenerative changes, greatest in the medial compartment, and tearing of the medial meniscus. (Ex. 16-1).

On October 10, 2014, Dr. Mangum, an internal medicine physician, performed an examination at the employer's request. Claimant told Dr. Mangum that she stood up and her right knee "just gave out." (Ex. 19-2). Dr. Mangum diagnosed right knee pain due to progressive degenerative arthritis. (Ex. 19-7). He opined that there had been "no work injury to the knee." (*Id.*) After reviewing the October 6, 2014 MRI and MRI report, Dr. Mangum maintained that claimant's

right knee symptoms were from advanced arthritis that had been present for years. (Ex. 22-2). He opined that claimant's knee "simply just gave her symptoms with that movement. It is 100% preexisting and there is no work related condition to this knee." (*Id.*)

Reasoning that claimant did not have right knee pain before the work event, Dr. Seyer did not agree with Dr. Mangum's opinion. (Ex. 26). However, after reviewing Dr. Shah's emergency room report, Dr. Seyer opined that "this should not be a new claim." (Ex. 28). In a "post-hearing" deposition, he explained that his original diagnosis was based on a description of a "twisting type of movement and acute pain where [claimant's] knee gave out." (Ex. 33-10). After considering the incident description claimant provided Drs. Shah and Mangum (which did not involve twisting) and the MRI findings, Dr. Seyer was unable to say with any degree of probability that the work activity caused the meniscal problems. (Ex. 33-10, -12).

The employer denied the claim, asserting that claimant's injury did not arise out of and in the course of employment. (Ex. 29). Claimant requested a hearing.

Reasoning that claimant was injured as a result of a risk connected with her work activity, the ALJ set aside the denial. *See Hubble v. SAIF*, 56 Or App 154, *rev den*, 293 Or 103 (1982). On review, the employer contends that claimant's injury did not "arise out of" her employment. As explained below, we agree with the employer's contention.

Claimant must establish that her injury "arose out of" and "in the course of" employment. ORS 656.005(7)(a); ORS 656.266(1). These phrases describe a unitary work connection test in which the "arising out of" and "in the course of" employment elements are two prongs of a single inquiry, which is whether the relationship between the injury and the work is sufficient to establish the compensability of the injury. *Norpac Foods, Inc. v. Gilmore*, 318 Or 363, 366 (1994). Whether an injury arose out of employment concerns the causal relationship between the injury and the employment, and whether the injury occurred in the course of employment concerns the time, place, and circumstances of the injury. *Id.* Both prongs of the work-connection test must be satisfied to some degree; neither is dispositive. *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 596 (1997).

The parties do not dispute that claimant was in the course of employment when she sustained her injury. Therefore, the only issue is whether the alleged injury "arose out of" employment.

To satisfy 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). In this context, risks are generally categorized as employment-related risks (which are compensable), personal risks (which are noncompensable), or neutral risks (which, having no particular employment or personal character, are compensable if the employment conditions put the claimant in a position to be injured by the neutral risk). See *Phil A. Livesley Co. v. Russ*, 246 Or 25, 29-30 (1983); *Wesley A. Canfield*, 67 Van Natta 381, 382 (2015).

Citing *Hubble*, claimant argues that sitting, standing, and walking were risks of her work environment. Based on the following reasoning, we find *Hubble* distinguishable.

In *Hubble*, the claimant’s left knee “buckled” as he was walking at work. He had torn cartilage, which his surgeon attributed to walking. Based on such evidence, the court concluded that the claimant had established a sufficient work relationship under then-ORS 656.005(8)(a) (now ORS 656.005(7)(a)), reasoning that “[w]alking was part of [the] claimant’s job; hence the risk of injury from walking was a risk of that job.” 56 Or App at 157.

Here, unlike in *Hubble*, there is no persuasive evidence that claimant had a right knee injury due to walking or other risk connected to the nature of her work or to which the work environment exposed her. On the contrary, Dr. Mangum opined that claimant’s right knee “gave out” due to symptoms from her preexisting arthritis. Specifically, attributing “100%” of claimant’s right knee condition to this preexisting condition, Dr. Mangum did not consider claimant’s condition to be work-related. Likewise, Dr. Seyer ultimately was unable to attribute claimant’s knee condition to her work activity.

Under such circumstances, we conclude that the “arising out of” requirement was not satisfied. Accordingly, claimant’s injury claim for a right knee condition is not compensable. Consequently, we reverse.

#### ORDER

The ALJ’s order dated November 25, 2015 is reversed. The employer’s denial is reinstated and upheld. The ALJ’s \$6,000 attorney fee and costs awards are also reversed.

Entered at Salem, Oregon on May 20, 2016