

In the Matter of the Compensation of  
**CAROLYN L. STREY, Claimant**

WCB Case No. 09-03640

**ORDER ON REVIEW**

Welch Bruun & Green, Claimant Attorneys  
James B Northrop, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Langer, Biehl, and Herman. Member Biehl dissents.

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

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," with the following summary.

Claimant's job as a "transition coordinator" required her to aid in the transitioning of Medicaid clients from nursing homes to community-based care settings. (Tr. 7, 36). At the time of her injury, the Portland office where claimant worked had been recently established, and office supplies were to be purchased by ordering through the Salem office. Sometimes claimant (as well as some of her coworkers) would buy the supplies needed "to get the job done" herself, using her own money, and she did not request reimbursement for these items. Such purchases included a rolodex, pens, and stamps. (Tr. 9, 10, 19). Claimant had experienced some difficulty receiving supplies ordered through the Salem office in a timely fashion. (Tr. 9). She assumed the Salem office was aware that she and some of her coworkers would purchase items that they needed immediately, such as stamps. (Tr. 12). However, claimant never directly informed the employer that she was purchasing such items. (Tr. 34).

Claimant's job required her to read vacancy and nursing home spreadsheets for use in placing clients. The spreadsheets could be read on the computer, but this was difficult, so they were printed out for better readability. (Tr. 13, 22).

On May 22, 2009, claimant had difficulty reading the small print on one of the printed spreadsheets.<sup>1</sup> She left the office and drove one mile in her personal vehicle to an office supply store. (Tr. 14, 17, 21). As claimant was walking to the entrance of the store, she tripped over a curb in front of the store and fell, fracturing her left wrist. (Tr. 17; Exs. 2, 4-1, 5).

Claimant's intent on going to the supply store was to purchase a magnifying glass for use at work to read the spreadsheets; she wished to alleviate eye strain "in order to accomplish [her] job" effectively. (Tr. 14, 30, 31). She was not on a break or her lunch time, and she viewed the trip as business-related, not personal. (*Id.*; Tr. 15, 25). She did not contact her employer and ask for permission to make the purchase, and she did not expect any reimbursement. (Tr. 25).

Mr. Watkins, claimant's supervisor, was not aware that employees were purchasing their own supplies. According to Mr. Watkins, there was a process to follow if employees needed supplies, so there was no need for claimant to go out and purchase work-related items on her own. (Tr. 38, 56-57). He would not have approved of claimant's actions had he known it was occurring. (Tr. 38). He explained that the "proper" procedure for ordering supplies was to retrieve the product information and item number from the office store catalog (which each transition coordinator had possession of), and to communicate that information via email or telephone to the assigned employee in the Salem office for ordering. (Tr. 44, 55). The need to purchase a magnifying glass was not one he would have anticipated for his employees. (Tr. 41). Mr. Watkins agreed that the transition coordinators were "out-stationed" employees, and that there was a certain amount of expected self-management. (Tr. 56).

Mr. Kingston, claimant's coworker, stated that the procedure for ordering supplies through Salem was to contact the person responsible, and then once that person had received an accumulation of orders from other transition coordinators around the state, an order would be placed. (Ex. 10-4). It could take a couple of weeks to receive supplies ordered in this manner. (Ex. 10-11). He believed the purchase of a magnifying glass should have been handled through the normal supply ordering procedure. (Ex. 10-5, -10).

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<sup>1</sup> According to claimant, the font "probably was a font five." (Tr. 14). Claimant's coworker stated that it was more likely an eight to ten pitch font. (Ex. 10-13).

Ms. Beetle, claimant's coworker, stated that she had in the past purchased things like post-its and pads for work use, for which she had never asked to be reimbursed. (Ex. 9-8). She stated that if she were in need of a supply right away, she would "maybe" go get it herself, instead of ordering through Salem. (Ex. 9-9).

### CONCLUSIONS OF LAW AND OPINION

In setting aside the denial, the ALJ concluded that claimant's injury arose out of and in the course of employment. On review, SAIF disputes that finding, contending that claimant was on a personal mission when she was injured. We conclude that claimant's injury is not compensable.

For an injury to be compensable, it must "arise out of" and occur "in the course of" employment. ORS 656.005(7)(a). The "arise out of" prong of the compensability test requires that a causal link exists between the worker's injury and her employment. *Krushwitz v. McDonald's Rests.*, 323 Or 520, 525-26 (1996); *Norpac Foods Inc. v. Gilmore*, 318 Or 363, 366 (1994). The requirement that the injury occur "in the course of" employment concerns the time, place and circumstances of the injury. *Fred Meyer Inc. v. Hayes*, 325 Or 592, 596 (1997); *Krushwitz*, 323 Or at 526.

The work connection test may be satisfied if the factors supporting one prong of the statutory test are minimal while the factors supporting the other prong are many. *Krushwitz*, 323 Or at 531 (citing *Phil A. Livesley, Co. v. Russ*, 396 Or 25, 28 (1983)). Both prongs, however, must be satisfied to some degree. *Hayes*, 325 Or at 596; *Krushwitz*, 323 Or at 531. Although both elements must be evaluated, neither is dispositive; ultimately, they serve as analytical tools for determining whether, "in light of the policy for which [that] determination is to be made[.]" the connection between the injury and the employment is sufficient to warrant compensation. *Andrews v. Tektronix, Inc.*, 323 Or 154, 161-62 (1996); *Rogers v. SAIF*, 289 Or 633, 642 (1980).

Even assuming the "in the course of" prong is satisfied marginally,<sup>2</sup> we do not find claimant's injury compensable because the "arising out of" prong of the work-connection test has not been satisfied. See *Hayes*, 325 Or at 596 (for an injury to be compensable, both the "arise out of" and the "in the course of" prongs of the work-connection test must be satisfied to some degree). We reason as follows.

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<sup>2</sup> See *Halsey Shedd RFPD v. Leopard*, 180 Or App 332, 337-38 (2002) (injury occurred "in the course of" employment even where the time, place, and circumstance connection to employment was "minimal" and had a "significant non-work component").

The “arising out of” prong requires that a causal link exist between claimant’s employment and her injury. *Krushwitz*, 323 Or at 525-56; *Gilmore*, 318 Or at 366. When assessing whether there is a sufficient causal link between a claimant’s injury and employment, the analysis centers on whether what occurred was an anticipated risk of employment. *See Hayes*, 325 Or at 601; *SAIF v. Marin*, 139 Or App 518, 522-23, *rev den*, 323 Or 535 (1996); *Mary S. Sandberg*, 60 Van Natta 2602, 2604 (2008).

We conclude that claimant’s act of going to the office supply store to purchase the magnifying glass exposed her to a risk that her employer could not reasonably have anticipated as being one incidental to her work. In undertaking to purchase a magnifying glass for use in reading the spreadsheets at work, claimant engaged in a task beyond the scope of the duties of her employment as a “transition coordinator.” Although she had significant independence in performing her job duties, leaving the premises to purchase a magnifying glass for her personal use at work was not a normal risk of her employment. The nature of her work as a “transition coordinator” was to aid in the transitioning of clients from nursing homes to community-based care settings. (Tr. 7, 36). Her job duties did not include responsibility for ordering or obtaining office supplies directly from a vendor. Rather, the employer had a specific procedure in effect for ordering supplies through its designated contact in the Salem office.

Claimant’s injury occurred off the employer’s premises, without employer knowledge or acquiescence, and in an area where the employer had no control. The employer did not authorize claimant to leave the work premises to purchase a magnifying glass, nor did it acquiesce in this conduct. While a magnifying glass may have been useful to claimant and allowed her to work more “effectively,” (Tr. 31), it was not a required prerequisite to do her job and she assumed the responsibility for, and any attendant risk of, meeting her job requirements (*i.e.*, reading spreadsheets). *See Haugen v. SAIF*, 37 Or App 601, 605 (1978) (“The employee assumes the responsibility for, and correspondingly any attendant risk of, meeting the job qualifications.”); *Mir Iliiaifar*, 49 Van Natta 499, 500 n 3 (1997). In addition, claimant did not expect reimbursement from the employer for the cost of the magnifying glass.

Given these circumstances, we conclude that claimant’s injury did not “arise out of” her employment. To the contrary, it arose out of her personal desire to get a magnifying glass. In other words, the risk of claimant tripping over the curb at the office supply store and breaking her wrist was not a risk that resulted either from the nature of her work or a risk to which her work environment exposed her.

*See Hayes*, 325 Or at 601. Rather, although her injury occurred during work hours, it originated from an act performed by claimant in her own interests; *i.e.*, the risk of injury resulted from claimant's personal decision to take a "break" from her work activities to purchase a magnifying glass to improve her vision.<sup>3</sup> *See Stuhr v. State Ind. Acc. Comm'n*, 186 Or 629 (1949) (although the claimant's injury while trying to obtain springs for the truck he used in his work occurred during work hours, it was a personal errand and did not "arise out of" employment).<sup>4</sup>

Consequently, on this record, claimant has not established a sufficient relationship between her injury and employment to warrant compensation. *See Andrews*, 323 Or at 161-62. Accordingly, we reverse.

### ORDER

The ALJ's order dated March 8, 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 November 24, 2010

Member Biehl dissenting.

The majority concludes that claimant's injury is not compensable because it did not arise out of her employment. Because I would find otherwise, I respectfully dissent.

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<sup>3</sup> *Cf. Tri-Met, Inc. v. Lamb*, 193 Or App 564 (2004) (the claimant's injury arose out of her employment because she was required by her employment duties to return to her employer's garage after her shift ended); *Kevin M. Lyon*, 54 Van Natta 1397, 1400 (2002) (the claimant's injury while transporting a personal toolbox from his workplace to his home did not occur during a "personal mission," but "arose out of" employment where, although the employer did not have the right to control the claimant at the time of injury, he was still acting in furtherance of the employer's business by taking his toolbox home, and the injury resulted from a risk associated with the work environment given that he had bought the toolbox through the employer in order to store necessary tools for his job, he kept the toolbox at the work site with the knowledge and acquiescence of the employer, and he took the toolbox home at the specific direction of the employer).

<sup>4</sup> SAIF also relies on *Russell A. Somfleth*, 48 Van Natta 865 (1996), *aff'd without opinion*, 147 Or App 549 (1997), where we adopted and affirmed an ALJ's order finding that the claimant's injury did not arise out of or occur in the course of employment. However, while a Board order adopting and affirming an ALJ's order serves to resolve the *parties'* dispute, it has no precedential value for future cases. *See Charles E. Easton*, 56 Van Natta 3896 n 1 (2004).

“A worker's injury is deemed to ‘arise out of’ employment if the risk of the injury results from the nature of his or her work or when it originates from some risk to which the work environment exposes the worker.” *Griffin v. SAIF*, 210 Or App 469, 473 (2007) (quoting *Fred Meyer Inc. v. Hayes*, 325 Or 592, 601 (1997)). In this context, risks are generally categorized as employment-related, personal, or neutral. *Phil A. Livesley Co. v. Russ*, 296 Or 25, 29-30 (1983); *Juan A. Renteria*, 60 Van Natta 866, 872 (2008). “Employment-related” risks are universally compensable; “personal” risks are universally noncompensable; and “neutral” risks (*i.e.*, risks having no particular employment or personal character) may or may not be compensable, depending on the situation. *Panpat v. Owens-Brockway Glass Container, Inc.*, 334 Or 342, 349-50 (2002); *Renteria*, 60 Van Natta at 872.

Here, claimant had difficulty reading the spreadsheets she was required to read for her job because of the small print size. As such, she went to the office supply store on the date of injury to purchase a magnifying glass so she could avoid eye strain and accomplish her job more effectively. (Tr. 14, 30, 31). Her sole motivation for obtaining the magnifying glass was to assist her in her work. She did not plan to use the item at home or outside of the work environment, but was planning to leave the magnifying glass at work. (Tr. 15). Claimant was injured when she tripped over the curb while entering the office supply store to buy the magnifying glass.

Claimant could have obtained a magnifying glass through the employer’s established supply ordering system, which was processed through its Salem office. However, because she needed the magnifying glass on the day of injury to perform her job duties more efficiently and effectively, she made the choice to purchase the item immediately from a local office supply store instead of ordering through the employer, which could take weeks. (*See* Tr. 9, 14, 30, 31; Ex. 10-11). As noted by the ALJ, since the funding grant for claimant’s program was of limited duration, time was of the essence.

Considering all the circumstances, claimant’s employment as a transition coordinator put her in a position to be injured in the manner that occurred. She was not on a personal mission when injured, but was attempting to purchase an item to allow her to perform her job more effectively, which furthered the employer’s interests and the goal of the program. Accordingly, I would agree with the ALJ that claimant’s injury “arose out of” her employment. Because the majority has concluded otherwise, I respectfully dissent.