
In the Matter of the Compensation of
WALTER GUILL, Claimant
WCB Case No. 13-04551
ORDER ON REVIEW
Welch Bruun & Green, Claimant Attorneys
Radler Bohy et al, Defense Attorneys

Reviewing Panel: Members Johnson, Lanning, and Somers. Member Lanning dissents.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that upheld the self-insured employer's denial of his injury claim. On review, the issue is course and scope of employment.

We adopt and affirm the ALJ's order with the following supplementation.

On July 31, 2013, while on the job driving a truck, claimant had a syncopal episode, resulting in the truck crashing. The crash caused a considerable amount of property damage to the truck and to highway barriers. Claimant was not injured in the crash.

Claimant required diagnostic medical services to ascertain the source of the syncopal episode. Those services never ascertained the source of the episode.

Claimant argued that the syncopal episode was an accidental event that arose out of and in the course of his employment. Citing *Phil A. Livesley Co. v. Russ*, 296 Or 25 (1983), he contended that, because his injury occurred in the "course" of his employment, and he eliminated "idiopathic" causes, an inference arose that his syncopal episode arose out of his employment. In doing so, claimant asserted that his syncopal episode should be analyzed under the "unexplained fall" doctrine and, as such, should be determined, as a matter of law, to have arisen from his employment. See *Blank v. U.S. Bank of Oregon*, 252 Or App 553, 557-58 (2012) (whether a fall is truly unexplained is a question of fact, and a fall will be deemed "truly unexplained" only if the claimant persuasively eliminates all idiopathic factors of causation).

The ALJ rejected claimant's argument that the "unexplained fall" doctrine applied and upheld the employer's denial. The ALJ explained that this was not a situation where a traumatic event whose cause was truly unexplained resulted in the syncopal episode. Rather, the ALJ noted that claimant sought benefits for the

syncopal episode itself. The ALJ found no evidence to support the conclusion that claimant's syncopal episode arose out of his employment. Finally, the ALJ rejected claimant's argument that the "increased danger" doctrine applied, reasoning that there was no evidence that anything in his work activity increased the danger of his having a syncopal episode.

On review, claimant contends that he sustained a "truly unexplained" syncopal episode, which resulted in his need for diagnostic medical services. As such, he asserts that his claim is compensable. Based on the following reasoning, we disagree.

A "compensable injury" is an accidental injury "aris[ing] out of" and "in the course of" employment requiring medical services or resulting in disability. ORS 656.005(7)(a). The phrases "arise out of" and "in the course of" are two prongs of a single inquiry into whether an injury is work related and is called the work-connection test. *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 596 (1997). The requirement that the injury occur "in the course of" employment concerns "the time, place and circumstances of the injury." *Id.* The "'arise out of' prong * * * requires that a causal link exist between the worker's injury and his or her employment." *Id.*

Where the cause of a fall is unknown, it is a "neutral" risk that is considered to arise out of employment as a matter of law so long as it occurs in the course of employment. *Russ*, 296 Or at 29-30. A fall will be deemed "truly unexplained" only if the claimant "persuasively eliminates all idiopathic factors of causation."¹ *Blank*, 252 Or App at 557-58; see *McTaggart v. Time Warner Cable*, 170 Or App 491, 504 (2000), *rev den*, 331 Or 633 (2001).

Claimant's reliance on the "unexplained fall" doctrine is misplaced. Here, it is the cause of the syncopal episode that is unexplained, not the cause of the crash. In other words, the cause of the crash is explained. It was the syncopal episode. See *Billie J. Owens*, 58 Van Natta 392 (2006), *aff'd without opinion*, 213 Or App 587 (2007) (a fall caused by fainting is not a truly unexplained fall, even if the cause of the fainting is unknown); *Magaly N. Villiers*, 56 Van Natta 510, 513 (2004) (fall was explained where the record established that the claimant lost consciousness). In contrast, in cases applying the "unexplained fall" doctrine,

¹ As used in this context, the term "idiopathic" means "peculiar to the individual," not "arising from an unknown cause." *Russ*, 296 Or at 27.

the cause of the fall is unexplained. Here, to establish compensability, claimant would need to prove that there is a work connection between the work and the syncopal episode. *See, e.g., Alfred L. Hillard*, 60 Van Natta 254, 259-60 (2008) (claim not compensable where the claimant suffered an idiopathic syncope episode, and the evidence did not establish that an employment-related risk contributed to his injury); *Tina Holliday*, 48 Van Natta 1024 (1996) (fall caused by fainting due solely to idiopathic factors was not compensable).

As there is no evidence connecting claimant's work with the syncopal episode, his claim is not compensable. Therefore, we affirm.

ORDER

The ALJ's order dated January 21, 2014 is affirmed.

Entered at Salem, Oregon on August 6, 2014

Member Lanning dissenting.

The majority concludes that claimant's injury claim is not compensable. Because I would reverse the ALJ's order and find the claim for diagnostic medical services compensable, I respectfully dissent.

ORS 656.005(7)(a) defines a "compensable injury" as "an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death[.]"

In *K-Mart v. Evenson*, 167 Or App 46, 50, *rev den*, 331 Or 191 (2000), the court explained that ORS 656.005(7)(a) does not require that a claimant's injury must both result in medical services and in disability or death. Rather, it is sufficient if the injury "requir[es] medical services." The court explained that ORS 656.005(7)(a) provides a clear definition of the minimum degree of harm necessary for the existence of a "compensable injury." *Id.* The medical services need not be directed toward the cure of any existing, identifiable disease; diagnostic or other medical services will suffice. *Id.* The court expressly rejected the carrier's argument that prior case law required that a "compensable injury" be one that results "in actual physical or mental harm[.]" *Id.* at 51.

In *Evenson*, the claimant was exposed at work to the bodily fluids of another person infected with HIV and she *required* prophylactic and preventative medical services as a result of the exposure. *Id.* at 49. The court held that the claimant sustained a compensable injury because she required medical services. *Id.* at 52.

Here, the parties stipulated that claimant required medical services after the MVA to ascertain the source of the syncopal episode. An August 2, 2013 urgent care chart note stated that the “employer requires eval,” which I interpret as meaning that the employer required claimant to have a medical evaluation. (Ex. 18-2). Other chart notes indicated that claimant was off work with no driving of equipment or vehicles until authorized by an attending physician. (Exs. 24, 26, 27). Under these circumstances, the work event “required” diagnostic medical services, consistent with *Evenson*. See 167 Or App at 51-52.

The next issue is whether the diagnostic medical services arose “out of and in the course of employment” under ORS 656.005(7)(a). Although the phrase represents a unitary test and neither part is dispositive, 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.*

Here, the employer concedes that the “course of employment” was satisfied because the syncopal episode occurred when claimant was working. Furthermore, I agree with claimant that his syncopal episode arose out of his employment, reasoning as follows.

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). 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 are compensable if the conditions of employment put the claimant in a position to be injured. *Id.*; *Russ*, 296 Or at 29-30.

A truly unexplained fall that occurs in the course of employment arises out of the employment as a matter of law. *Blank v. U.S. Bank of Oregon*, 252 Or App 553, 557 (2012); *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, and a fall will be deemed “truly unexplained” only if the claimant persuasively eliminates all idiopathic factors of causation. *Blank*, 252 Or App at 557-58; *Russ*, 296 Or at 30. As used in this context, the term “idiopathic” means “peculiar to the individual” and not “arising from an unknown cause.” *Russ*, 296 Or at 27 n 1.

Here, the parties stipulated that the syncopal episode was “truly unexplained.” In other words, there is no indication that claimant’s syncopal episode was related to personal factors. Although claimant did not sustain a physical injury, the parties stipulated that he received diagnostic medical services for the syncopal episode, which satisfies the definition of a “compensable injury” under ORS 656.005(7)(a), based on *Evenson*. Furthermore, because the “course” of employment is satisfied, the compensable “injury” (*i.e.*, diagnostic medical services) is compensable because it was the result of a neutral risk of employment and therefore “arose out of” employment. *See McTaggart*, 170 Or App at 500.

The employer argues that, even if claimant’s injury arose out of employment, it is not compensable based on the lack of evidence establishing medical causation. I disagree.

As discussed above, the court cases have explained that a truly unexplained fall that occurs in the course of employment arises out of the employment as a matter of law. *Blank*, 252 Or App at 557; *McTaggart*, 170 Or App at 504. In *McTaggart*, the court explained that the “purpose for eliminating idiopathic causes is not to disprove other possible explanations of how the injury occurred, but, rather, to determine whether the fall – whose precise causation is by definition unknowable – arose out of the employment.” 170 Or App at 504.

Here, the parties stipulated that the syncopal episode was “truly unexplained,” which means that the precise causation is by definition unknowable. Because the “course” of employment is satisfied, the compensable “injury” (*i.e.*, diagnostic medical services) is compensable because it was the result of a neutral risk of employment and therefore “arose out of” employment as a matter of law. *See id.*

In summary, I conclude that claimant’s work event “required” diagnostic medical services, occurred in the “course” of employment, and “arose out of” employment. Because the majority concludes otherwise, I dissent.