

In the Matter of the Compensation of  
**CATHERINE A. SHELDON, Claimant**

WCB Case No. 12-04027

**ORDER ON REVIEW**

Welch Bruun & Green, Claimant Attorneys  
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Reviewing Panel: Members Lanning and Langer.

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

FINDINGS OF FACT

We adopt the ALJ's "Findings of Fact," as summarized below, with additional supplementation.

On her way to work, in May 2012, while crossing the lobby of the building from which her employer leases office space, claimant fell and sustained an injury. She told the ambulance team that she was "walking and then her foot got caught and she tripped and fell." (Ex. 54-1). However, she recounted to the employer's investigator that she had tripped over the lip of the elevator and fell. (Tr. 35). In June 2012, she reported to an examining physician that she was walking into work "when she slipped and fell somehow[.]" (Ex. 60-1).

On behalf of the employer, Dr. Bell reviewed claimant's medical records. Dr. Bell identified two of claimant's medical conditions, diabetes and severe obesity, that may have contributed to her fall. (Ex. 68-1). Dr. Bell opined that "it is at least equally possible [claimant's] fall \* \* \* was caused by idiopathic problems associated with diabetes and/or obesity as it was due to risks associated with employment." (*Id.*)

Claimant's primary care physician, Dr. Kelly, a pulmonary and internal medicine specialist, also could not rule out the following potential idiopathic factors of causation: peripheral neuropathy, morbid obesity, ankle weakness, and antihypertensive medications. (Ex. 70-7-12).

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## CONCLUSIONS OF LAW AND OPINION

In upholding the employer’s denial, the ALJ concluded that claimant’s fall was “unexplained,” but that it did not occur in the course of her employment. In so finding, the ALJ determined that the employer did not have sufficient control over the lobby of the building where it leased office space for claimant to come within the “parking lot” exception of the “going and coming” rule exclusion.

On review, claimant contends that the employer had sufficient control of the lobby under specific lease provisions for her injury to be compensable. The employer contends otherwise and also argues that, contrary to the ALJ’s determination, claimant’s fall was not unexplained. The employer maintains that Drs. Bell and Kelly identified multiple potential idiopathic causes of claimant’s fall that she did not eliminate. For the following reasons, we conclude that claimant’s injury claim is not compensable.

To be compensable, an injury must “aris[e] out of and in the course of” employment. 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.*

Because it is dispositive in this case, we first address whether claimant’s injury meets the “arising out of” element of the work-connection test. Specifically, the question is whether her fall was truly unexplained (*i.e.*, the cause of the accident cannot be directly established) such that it “arose out of” her employment.<sup>1</sup>

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<sup>1</sup> Claimant does not contend that an employment risk contributed to her injury. Moreover, our review finds no such employment contribution. Therefore, the “mixed risk” doctrine would not apply to her injury claim. *See Janet G. Cavalliere*, 66 Van Natta 228, 234 (2014) (under “mixed risk” doctrine,

where the claimant’s fall was due to *both* personal and employment reasons (*i.e.* was *not* truly “unexplained”), her injury was compensable); *Theresa A. Graham*, 63 Van Natta 740, 744 (2011) (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).

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); *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 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. *Lang*, 326 Or at 36; *Phil A. Livesley Co. v. Russ*, 296 Or 25, 29-30 (1983).

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.”<sup>2</sup> *Blank v. U.S. Bank of Oregon*, 252 Or App 553, 557-58 (2012); see *McTaggart v. Time Warner Cable*, 170 Or App 491, 504 (2000), *rev den*, 331 Or 633 (2001). Where it is “equally possible” that idiopathic factors or work-related factors (which are unidentified) caused a fall, the fall cannot be said to be “truly unexplained” and the claim is not compensable. *Blank*, 252 Or App at 558 (citing *Russ*, 296 Or at 30, and *Mackay v. SAIF*, 60 Or App 536 (1982), *rev den*, 296 Or 120 (1983)).

Therefore, in order for a fall to be considered “truly unexplained,” a claimant must adequately eliminate all possible idiopathic causes for the fall. *Blank*, 252 Or App at 560. “[W]here idiopathic causes for an unexplained fall have been eliminated, the inference arises that the fall was traceable to some ordinary risk, *albeit unidentified*, to which the employment premises exposed the employee.” *Russ*, 296 Or at 32 (emphasis added); see also *Cavalliere*, 66 Van Natta at 231-32.

Here, the record does not establish that claimant’s fall was “truly unexplained.” To begin, the medical evidence raised the possibility that idiopathic factors (such as peripheral neuropathy, morbid obesity, ankle weakness and antihypertensive medications) caused, or contributed to, claimant’s fall. (Exs. 68-1, 70-7-12). We acknowledge that, while he was claimant’s primary care physician, Dr. Kelly found no evidence of peripheral neuropathy, loss of balance due to obesity, ankle weakness, or lightheadedness due to antihypertensive medications. (Ex. 70). However, despite the lack of specific findings, Dr. Kelly

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<sup>2</sup> As used in this context, the term “idiopathic” means “peculiar to the individual,” not “arising from an unknown cause.” *Russ*, 296 Or at 27.

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unequivocally concluded that those idiopathic factors could not be excluded as a possible cause of claimant's fall. (Ex. 70-7-12). Specifically, he confirmed that those four personal risk factors "have the potential to have contributed to [claimant's] fall." (Ex. 70-24).

Dr. Bell also concluded that claimant's medical conditions of severe obesity and diabetes were potential contributing causes of claimant's fall. (Ex. 68-1). In particular, she opined that it was "equally possible" that claimant's fall was caused by idiopathic problems as it was due to work-related risks. (*Id.*) As noted above, an "equally possible" determination regarding a fall at work does not establish that an injury arose out of a claimant's employment. *Blank*, 252 Or App at 558.

Under such circumstances, we find that claimant did not persuasively eliminate the possible idiopathic reasons for her fall, as described by Drs. Bell and Kelly. *See Horace Brown*, 65 Van Natta 159, 162 (2013) (all potentially idiopathic factors not eliminated where a physician opined that a syncopal episode was possible and could not be ruled out). Accordingly, we find that claimant's fall was not "truly unexplained." Therefore, consistent with the aforementioned case precedent, claimant's injury did not arise out of her employment. Consequently, based on this reasoning, we affirm.

#### ORDER

The ALJ's order dated May 17, 2013 is affirmed.

Entered at Salem, Oregon on February 12, 2014