J. C. v. Experian Information Solutions (October 23, 2007)

STATE OF VERMONT
DEPARTMENT OF LABOR

J. C.

v.

Experian Information Solutions

Opinion No. 30-07WC

By: Phyllis Severance Phillips, Esq.
Hearing Officer

For: Patricia Moulton Powden
Commissioner

State File No. U-04233

RULING ON CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

APPEARANCES:

Michael Green, Esq., for Claimant
John Valente, Esq., for Defendant

ISSUE PRESENTED:

Whether a genuine issue of material fact exists as to the compensability of Claimant's claim for workers' compensation benefits arising out of her September 15, 2003 injury.

FINDINGS OF FACT:

The following material facts are undisputed:

1. On September 15, 2003 Claimant Judy Carlson was employed by Defendant Experian Information Solutions.

2. Defendant is a bulk mail facility with the numerous machines necessary to print, cut, fold, insert and mail a high volume of bulk mail.

3. Claimant had worked for Defendant or its predecessor companies since 1984. She started as a temporary machine operator. She then trained as a mechanic. Over the years, she was promoted through the ranks to Senior Mechanic.

4. Kevin Barkey was a machine operator at Experian. Shortly before 11:00 PM on September 15, 2003 he saw Claimant walking towards him.

5. Claimant was next to an unwinder machine known as Machine 490.

6. When Claimant was 10-15 feet from Mr. Barkey, he noticed that she was shaking. There was music playing, and he thought that she might be dancing or "goofing around." He then saw her "go down."

7. Claimant dropped like dead weight. She fell without attempting to protect herself. Mr. Barkey saw her strike the back of her head on a large machine bolt that extended from the end of Machine 490. The bolt is about two feet from the floor.

8. Claimant then continued to fall towards the floor and again struck her head on the machine, this time against a steel "rail" about three inches from the floor.

9. Claimant landed on her left side. Her left shoulder was on the ground and her tool belt was under her. Mr. Barkey, who was only about 10 feet away, came to her assistance within seconds.

10. At the time, Claimant was bleeding from the head and mouth. According to Mr. Barkey, she was "trembling" and "shaking." He was concerned that she was going to hit her head on the cement floor. He cradled her head in an effort to protect her from further injury.

11. The Rutland Regional Ambulance immediately responded to the scene. Their report indicates that Claimant initially was able to speak to them, but then began a grand mal seizure.

12. The Rutland Hospital Emergency Department Report reports that paramedics initially found Claimant "perhaps a bit lethargic but cooperative following commands and then began experiencing seizure activity."

13. The Emergency Department diagnosed Claimant with a skull fracture, head injuries, a left shoulder dislocation, liver laceration, fractured ribs and a scalp laceration.

14. Claimant's injuries were so severe that the police initially considered foul play. Ultimately, the police concluded that the injuries occurred when she "fell against unwinder Machine Number 490."

15. Claimant has no recollection of the events leading to her injury. She does not recall anything until she awoke in the hospital about two weeks later.

16. The Employer's Form 1 described the incident as follows: "THE IW APPERARED (sic) TO HAVE A SEIZURE AND PAAOUT (sic) WHICH CAUSED HER TO FALL AND HIT HER HEAD ON THE UNWINDER STAND."

17. Defendant denied the claim on the grounds that the incident did not arise from Claimant's employment.

DISCUSSION:

1. In order to prevail on a motion for summary judgment, the moving party must satisfy a stringent two-part test: first, no genuine issue of material fact must exist between the parties; and second, there must be a valid legal theory that entitles the moving party to judgment as a matter of law. *Price v. Leland*, 149 Vt. 518, 521 (1988); V.R.C.P. 56(c). The moving party has the burden of proof, and the opposing party must be given the benefits of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists. *Id., citing Cavanaugh v. Abbott Laboratories*, 145 Vt. 516, 520 (1985).

2. In the current claim, the key issue is compensability. Claimant argues that she suffered an idiopathic fall, the injurious consequences of which were exacerbated because of her proximity either to the unwinder machine and/or to the cement floor, both work-related hazards. Claimant argues that the increased danger posed by these work conditions establishes the causal connection necessary to render her injuries compensable.

3. In contrast, Defendant argues that questions of fact exist as to whether Claimant's injuries were caused by the combination of her striking the unwinder machine and the cement floor or solely by striking the cement floor. If the latter, Defendant argues, then this is insufficient legally to establish that work conditions increased the danger of injury from an idiopathic fall, and therefore Claimant's motion for summary judgment must fail.

4. To establish a compensable claim under Vermont's workers' compensation law, a claimant must show both that the accident giving rise to his or her injury occurred "in the course of the employment" and that it "arose out of the employment." *Miller v. IBM*, 161 Vt. 213, 214 (1993); 21 V.S.A. §618.

5. An injury occurs in the course of employment "when it occurs within the period of time when the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of [the] employment contract." *Miller*, *supra* at 215, *quoting Marsigli Estate v. Granite City Auto Sales, Inc.*, 124 Vt. 95, 98 (1964).

6. An injury arises out of the employment "if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where [claimant] was injured." *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 599 (1993), *quoting* 1 Larson, *Workers' Compensation Law* §6.50 (1990) (emphasis in original). This so-called "positional risk" analysis lays responsibility on an employer when an employee's injury would not have occurred "but for" the employment and the worker's position at work. *Id.*

7. Putting these two prongs of the compensability test together, the "in the course of" requirement establishes a *time and place* connection between the injury and the employment, while the "arising out of" requirement establishes a *causal* connection between the injury and the employment. *See Spinks v. Ecowater Systems*, WC 04-217 (Minn. Work.Comp.Ct.App., January 21, 2005). Both connections are necessary for a claim to be compensable.

8. There is no dispute in the current claim as to the "in the course of" requirement to establish compensability. Claimant's injuries occurred while she was at Defendant's work place, performing the job duties she was hired to do at the time she was supposed to be doing them.

9. The dispute here concerns the "arising out of" component, and it is driven by the fact that Claimant's fall itself was not caused by her work, but rather by a medical event that was purely personal to her, a so-called idiopathic fall.[1] Professor Larson has described the requirements for finding such injuries compensable as follows:

> The basic rule, on which there is now general agreement, is that the effects of [an idiopathic] fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle.

1 Larson, *Workers' Compensation Law* §9.01[1].

10. It is important to understand the rationale for requiring that the employment connection in idiopathic fall claims be one of "increased danger" rather than simply "positional risk." An idiopathic fall case begins as one caused solely by the claimant's personal risk, with no work-related causal link whatsoever. To shift responsibility for the injury that results from such a fall to the employer, it is reasonable to require a greater showing than merely that the employee was at work when he or she fell. Thus, there must be some "substantial employment contribution" to the resulting harm for it to be compensable. *Larson, supra* at §9.01[4][b].

11. Applying this rule to the current claim, were Defendant to admit that Claimant's injuries were caused, in whole or in part, by striking the unwinder machine, then there would be no genuine issue of material fact as to compensability and Claimant would be entitled to summary judgment as a matter of law. In such circumstances, the unwinder machine's proximity to Claimant at the time of her fall would pose a sufficiently increased danger of harm as to meet the "substantial employment contribution" test.

[1] The medical cause of the event that led to Claimant's idiopathic fall remains unclear. Defendant contends that Claimant may have suffered an alcohol withdrawal seizure, a conclusion that Claimant argues is merely speculative. Regardless of its medical origin, however, the parties agree that the precipitating event that led to Claimant's fall was purely personal and not work-related at all. Thus the fall qualifies as an idiopathic one and the rules relating to such falls apply. *See Pemberton Chevrolet, Inc. v. Harger*, 120 P.3d 892 (Ok.Civ.App. 2005) (alcohol withdrawal seizure constitutes an idiopathic condition).

12. Defendant has admitted no such thing, however. To the contrary, Defendant has produced expert medical testimony that purports to establish that Claimant's injuries resulted solely from her striking the cement floor. This raises a more controversial question – "whether the effects of an idiopathic fall to a level floor should be deemed to arise out of the employment." *Larson, supra.*

13. The majority of jurisdictions that have considered the question have denied compensation in level-fall cases, reasoning that the employment does not significantly add to the risk merely by providing a floor upon which the claimant might fall. *Larson, supra* at §9.01[4][a] and cases cited therein.

14. This Department has considered idiopathic fall cases before, but not yet in the context of a fall solely to a level floor. *See A.D. v. Grand Union Co.*, Opinion No. 34-02WC (August 20, 2002) (injuries caused by idiopathic fall down stairs to cement landing found compensable); *Marcy v. Georgia Pacific*, Opinion No. 27-98WC (June 1, 1998) (injuries caused by idiopathic fall from three-foot platform found compensable). Having considered the rationale underlying the increased-danger requirement in idiopathic fall claims, the majority position as to level-fall cases is the most reasonable. The law of gravity dictates that when one falls, one will land on the surface below. If all that the employment contributes to an idiopathic fall situation is a level surface to end the fall, then it has not contributed any increased danger at all. To find compensability in such a situation – when the fall's origin is purely personal in nature, with no link whatsoever to work – would be to negate the causal connection between the injury and the employment that the "arising out of" language of the statute requires.

15. Claimant cites to cases from other jurisdictions in support of her argument that the hardness of the floor at work provides the requisite increased danger to sustain compensability. *See, e.g., Ball v. Workmen's Compensation Appeal Board,* 340 A.2d 610 (Pa. Commw. 1975); *George v. Great Eastern Food Prod., Inc.*, 207 A.2d 161 (N.J. 1965). Presumably Claimant contends that had she fallen to a floor that was constructed of some softer material than cement, her injuries would not have occurred. This line of reasoning would require that a standard of acceptable hardness be established, with idiopathic falls to sufficiently hard floors being compensable and those to softer floors being not. *See Koenig v. North Shore Landing*, 54 W.C.D. 86, 94 (Minn.Work.Comp.Ct.App., 1996). I decline to adopt a rule that requires factual distinctions so fine as to be impractical. Legal standards are best applied when their outcome is predictable. Better to draw the line at falls involving some clearly observable employment-connected danger, therefore, such as a height, a machine, a sharp corner or a moving vehicle, than to attempt to ascertain the relative hardness of a floor.

16. Viewing the evidence in the light most favorable to Defendant, it is possible that Claimant's injuries were caused solely by virtue of her contact with the level floor after her fall, and not as a result of striking the unwinder machine on the way down. If that is the case, then her claim is not compensable. A genuine issue of material fact exists, therefore, which renders summary judgment in Claimant's favor inappropriate.

ORDER:

Claimant's Motion for Summary Judgment is **DENIED**.

Dated at Montpelier, Vermont this 30th day of October 2007.

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Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.