BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EDWARD A. GREEN, Claimant, vs. COMPASS GROUP USA d/b/a BON APPETIT, Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5059233 A P P E A L D E C I S I O N Head Notes: 1108

Defendants Compass Group USA, Inc. d/b/a Bon Appetit, employer, and its insurer, New Hampshire Insurance Company, appeal from an arbitration decision filed on November 8, 2019. Claimant Edward A. Green cross-appeals. The case was heard on August 9, 2018, and it was considered fully submitted in front of the deputy workers' compensation commissioner on September 10, 2018.

The deputy commissioner found claimant sustained an injury that arose out of and in the course of his employment when he squatted and bent over to retrieve a fork off the ground on October 17, 2016. The deputy commissioner found claimant was entitled to temporary disability benefits from March 31, 2017 through July 10, 2017. The deputy commissioner found claimant sustained seven percent permanent impairment of his left foot. The deputy commissioner found all benefits should be paid at the weekly rate of $324.54. The deputy commissioner determined claimant is entitled to receive reimbursement for the medical expenses and mileage itemized in Claimant's Exhibits 4 and 5. However, the deputy commissioner found claimant was not entitled to receive penalty benefits or costs.

On appeal, defendants assert the deputy commissioner erred in finding claimant proved he sustained an injury that arose out of and in the course of his employment. In the alternative, defendants assert the deputy commissioner erred in finding claimant met his burden to prove his entitlement to temporary and permanent disability benefits.

On cross-appeal, claimant asserts the deputy commissioner erred in failing to award penalty benefits and costs.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 86.24 and 17A.15, the arbitration decision filed on November 8, 2019, is respectfully reversed.

The deputy commissioner found claimant sustained an injury that arose out of and in the course of his employment. For the reasons that follow, the deputy commissioner's finding that claimant sustained an injury that arose out of his employment is respectfully reversed.

Neither party disputes whether claimant's injury occurred in the course of his employment; the issue is whether claimant's injury arose out of his employment. As explained by the Iowa Supreme Court in Lakeside Casino v. Blue:

> The element of "arising out of" requires proof "that a causal connection exists between the conditions of [the] employment and the injury." Miedema, 551 N.W.2d at 311. "In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment." Id.; accord McIlravy v. N. River Ins. Co., 653 N.W.2d 323, 331 (Iowa 2002) (stating injury "must be related to the working environment or the conditions of employment"); Griffith v. Norwood White Coal Co., 229 Iowa 496, 502, 294 N.W. 741, 744 (1940) (stating "injury arises out of the employment if it can reasonably be said to result from a hazard of the employment").

743 N.W.2d 169, 174 (Iowa 2007).

In Lakeside, the Court declined to adopt the positional-risk doctrine, under which an injury arises out of employment "'as long as the employment subjected [the] claimant to the actual risk that caused the injury'" or "'would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he would be injured.'" Id. at 176-77 (citing 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 3.04, at 3–5, § 3.05, at 3–6) (2007)).

Instead, the Court reaffirmed its acceptance of the actual-risk rule. Id. at 176-78. Under the actual-risk rule, "'[i]f the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment.'" Id. at 174 (quoting Hanson v. Reichelt, 452 N.W.2d 164, 168 (Iowa 1990)).

Applying the actual-risk rule to the instant case, I find claimant did not sustain an injury that arose out of his employment.

In his answers to defendants' interrogatories, claimant described his mechanism of injury as follows: "[Claimant] was washing dishes and bent down to pick up a fork that fell on the floor. When he bent down to pick up the fork he heard a pop in his left outer foot." (Defendants' Exhibit C, p. 3)

At hearing, claimant described the incident with additional detail:

Q. I think it would be beneficial if you demonstrated how you bent down and picked up the fork. Now, were you having any problems with any other parts of your body at that time?

A. Yes. I was having a great deal of stiffness in my back, lower back, so it hurt to bend over.

Q. All right. So did that affect the way you picked up --

A. Yes. That made a big difference in the way that I had to get down to the floor to be able to reach something.

. . .

A. Okay. Sorry. Yes. So the fork was right next to the wall. And due to the stiffness of my back, I had to lean against the wall to get down far enough to be able to reach the fork. And when I was down about here (indicating), then at that point is when the injury occurred.

Q. That's when you felt the pop?

A. Yes.

Q. All right. So what you demonstrated is that you basically put your body up against the wall?

A. Yes.

Q. Your left side?

A. Yes. And slid down.

Q. Using your shoulder?

A. Yes.

Q. And using your shoulder, you slid down and bent your left knee?

A. Yes.

Q. All right.

(Hearing Transcript, pp. 21-22).

Based on claimant's descriptions of the incident, there was nothing about the nature of claimant's employment that exposed him to the risk of an injury to his foot. He presented no evidence, for example, that something about the wall or the floor caused him to slip or move awkwardly as he bent over and reached. Nor did he provide any evidence that something about the wall or the floor caused or contributed to the actual fracture of his foot. Simply put, he was bending over.

While I agree with the deputy commissioner that claimant was within his work duties when he bent over to pick up the fork, the question is whether claimant's working environment or conditions of his employment caused or contributed to the injury to his foot. I find claimant presented no such evidence. Instead, I find claimant's injury is unexplained by the nature of claimant's employment. In other words, I find claimant's injury occurred coincidentally while at work. Thus, applying the actual-risk rule, I find claimant failed to satisfy his burden to prove he sustained an injury that arose out of his employment.

In a more recent decision, the Iowa Supreme Court adopted the increased-risk rule under the limited circumstances of idiopathic falls, *i.e.*, "fall[s] due to the employee's personal condition." Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 86 (Iowa 2018). Under the increased risk rule, an injury is deemed to have arisen out of employment if a condition of employment increased the risk of injury. Id. at 92 (citing Koehler Elec. v. Wills, 608 N.W.2d 1, 5 (Iowa 2000)). The Court specifically noted that "[t]he actual-risk rule that we relied upon in Lakeside Casino remains appropriate for unexplained rather than idiopathic injuries." Id. at 91 n. 1.

Claimant in this case did not fall. However, even assuming the Court intended to extend the increased-risk rule to all idiopathic injuries—meaning all injuries caused by conditions purely personal to claimants—this broader application would not change my finding that claimant failed to satisfy his burden to prove his injury arose out of his employment.

As discussed above, I found there was nothing about the condition of claimant's employment that caused or contributed to claimant's injury - and as such, I likewise find there was no condition of claimant's employment that increased his risk of injury. Again, I find claimant's injury occurred coincidentally at work. As such, applying the increased-risk rule, I find claimant failed to satisfy his burden to prove he sustained an injury that arose out of his employment.

Thus, applying either doctrine, claimant failed to prove he sustained an injury that arose out of his employment. The deputy commissioner's findings on this issue are respectfully reversed.

Having concluded claimant did not satisfy his burden to prove a work-related injury, the remaining issues on appeal pertaining to claimant's entitlement to benefits, including penalty benefits, and taxation of costs are moot.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on November 8, 2019, is respectfully reversed.

Claimant shall take nothing from these proceedings.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 6th day of August, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served as follows:

Thomas Wertz (via WCES)

Nathan McConkey (via WCES)