BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON BLUML,

Claimant,

vs.

DEE JAYS INC. d/b/a LONG JOHN SILVERS,

Employer,

and

COMMERCE & INDUSTRY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5047125

APPEAL

DECISION

Head Note Nos: 1106, 1402.30

Claimant Jason Bluml appeals from an arbitration decision filed on January 13, 2016. Defendants Dee Jays, Inc., d/b/a Long John Silvers, employer, and its insurer, Commerce & Industry Insurance Company, respond to the appeal. The case was heard on October 13, 2015, and it was considered fully submitted in front of the deputy workers' compensation commissioner on November 13, 2015.

The deputy commissioner found because claimant experienced an idiopathic fall on February 15, 2012, which was caused by claimant's non-work-related seizure disorder which was seriously aggravated by claimant's alcoholism, and because claimant was on a level floor on defendant-employer's premises when he fell, and there were no work-related hazards which claimant struck as he fell to the floor, claimant failed to carry his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer. The deputy commissioner awarded claimant nothing.

Because the deputy commissioner found claimant failed to carry his burden of proof on the issues of causation and compensability, the deputy commissioner found all other issues raised by claimant in the arbitration proceeding are moot and the deputy commissioner did not address those issues, which include the extent of entitlement, if any, to temporary and permanent disability benefits, claimant's entitlement to penalty benefits, and claimant's entitlement to payment of requested past medical expenses

and future medical expenses necessitated by claimant's fall. The deputy commissioner ordered the parties to pay their own costs of the arbitration proceeding.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to carry his burden of proof that he sustained an injury which arose out of and in the course of his employment with defendant-employer as alleged because the hardness of the ceramic tile floor on which claimant fell allegedly affected the severity of his injuries. Claimant asserts the deputy commissioner erred in failing to award healing period benefits and in failing to award industrial disability benefits or, in the alternative, in failing to award permanent total disability benefits. Claimant asserts the deputy commissioner erred in failing to award penalty benefits. Claimant also asserts the deputy commissioner erred in failing to award payment of requested past medical expenses and in failing to award payment of future medical expenses necessitated by the fall.

Defendants assert on appeal that the arbitration decision should be affirmed in its entirety.

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

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I reach the same analysis, findings, and conclusions as those reached by the deputy commissioner.

Pursuant to Iowa Code sections 17A.5 and 86.24, I affirm and adopt as the final agency decision those portions of the proposed arbitration decision filed on January 13, 2016, which relate to the issues properly raised on intra-agency appeal.

I find the deputy commissioner provided sufficient analysis of the issues raised in the arbitration proceeding. I affirm the deputy commissioner's findings of fact and conclusions of law pertaining to those issues. I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that on February 15, 2012, he sustained an injury which arose out of and in the course of his employment with defendant-employer as alleged. Because I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof on the issues of causation and compensability, I affirm the deputy commissioner's finding that it is unnecessary to address the other issues raised by claimant in the arbitration proceeding, which include the extent of entitlement, if any, to temporary and permanent disability benefits, claimant's entitlement to penalty benefits, and claimant's entitlement to payment of requested past medical expenses and future medical expenses necessitated by the fall. I also affirm the deputy commissioner's order that the parties pay their own costs of the arbitration proceeding. I affirm the deputy commissioner's findings, conclusions and analysis regarding those issues with the following additional analysis:

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

In Iowa, the general rule is that idiopathic injuries, or injuries personal to an employee, are not compensable. However, as with any general rule, there are certain exceptions. In Koehler Electric v. Wills, 608 N.W.2d 1, (Iowa 2000), the claimant fell from a ladder while working on a customer's air conditioning unit. The claimant injured his head and bilateral shoulders as a result of that fall. Evidence was presented that the claimant in Koehler fell four to five feet from a ladder onto concrete. The evidence also suggested that the claimant fell from the ladder due to a risk personal to the claimant, which was withdrawal from alcohol. Despite the fact that the general rule in Iowa states that injuries to an employee due to personal risks are not compensable, the Iowa Supreme Court held that the claimant's injuries in Koehler were compensable. The Iowa Supreme Court said, "We hold that it is not necessary for a claimant injured in an idiopathic fall to prove that his injuries were worse because he fell from a height. It is only required that he prove that a condition of his employment increased the risk of Injury." (Id. at p. 5)

An idiopathic fall which causes an injured worker to hit his or her head on an object or structure as he or she falls to the floor is compensable under the Iowa workers' compensation law consistent with Koehler. However, an idiopathic fall on a level floor generally is not compensable. In Benco Manufacturing v. Albertson, No. 08-0746, filed February 4, 2009 (Iowa Ct. App.) Unpublished, 764 N.W. 2d 783 (Table), the workers' compensation commissioner applied the Koehler decision in addressing a case where a worker went to the restroom and may have passed out or blacked out, falling and hitting her head on a concrete wall. The evidence was conflicting whether the worker passed out or was hit on the back of the head by the rest room door. The court noted that idiopathic falls, falls due to personal conditions, onto level surfaces, generally are not compensable.

Claimant in this matter hit no objects or structures as he fell to the floor. There is no real dispute that the injuries sustained by claimant were rendered more serious because claimant's fall occurred on a ceramic tile floor inside defendant-employer's restaurant. This appears to be a case of first impression in the State of Iowa. Claimant

argues Iowa should adopt the rule followed by a minority of jurisdictions which hold that idiopathic falls on a level floor are compensable when the hardness of the floor affects the severity of the injury. See e.g., Chapman, Dependents of v. Hanson Scale Co., 495 So.2d 1357 (Miss. 1986); George v. Great Eastern Food Products, Inc. 44 N.J. 44 (N.J. 1965); General Ins. Corp v. Wickersham, 235 S.W.2d 215 (Tex. Civ. App. 1950)

Defendants in this matter argue that Iowa should adopt the rule followed by the majority of jurisdictions which hold that idiopathic falls on a level floor are not compensable regardless of the hardness of the floor on the theory that a floor presents a risk or a hazard encountered everywhere and that such risks and hazards presented by a level floor are the same risks which confront all members of the public. See, e.g., Luvaul v. A. Ray Barker Motor Co., 72 N.M. 447, 384 P.2d 885 (1963); Ledbetter v. Michigan Carton Co., 74 Mich. App. 330, 253 N.W.2d 753 (1977); Evans v. Hara's, Inc., 123 Idaho 473, 849 P.2d 934 (1993); Gates Rubber Co. v. Industrial Com. of Colorado, 705 P.2d 6 (Colo. 1985); Montanari v. Lehigh Portland Cement Co., 282 A.D. 1082, 126 N.Y.S.2d 180 (NY 1953); Williams v. Industrial Commission, 38 Ill. 2d 593, 232 N.E.2d 744 (1967); Sudduth v. Williams, 517 S.W.2d 520 (Tenn. 1974); Winegar v. International Tel. & Tel., 1 Va. App.260, 337 S.E.2d 760 (1985); Harris v. Ohio Bureau Of Workers' Compensation, 117 Ohio App.3d 103, 690 N.E. 2d 19 (1996); Zuchowski v. United States Rubber Co., 102 R.I. 165, 229 A.2d 61 (1967); Kraynick v. Industrial Com., 34 Wis.2d 107, 148 N.W.2d 668 (1967).

In Luvaul v. A. Ray Barker Motor Co., 72 N.M. 447, 384 P.2d 885 (1963), the New Mexico supreme court held that the claimant did not sustain a compensable injury when he fell while working on an ordinary, ground-level concrete floor and he hit no machinery or any other objects as he fell to the floor. The New Mexico court stated the following in its decision, in pertinent part:

> If [C]laimant's previous physical condition caused him to fall to the concrete floor and he sustained a basilar skull fracture, we come to this. In what manner did the employment contribute to the hazard of the fall? In every case there must be a causal connection between the injury and the employment, or the condition under which it is required to be performed, before the injury can be found to arise out of the employment. Any person who falls, if not prevented from doing so, will strike the ground or the floor. That the floor at the place of employment was concrete should not, in our opinion, alter the rule applicable in the circumstances. Claimant's fall and injury were not the result of a risk involved in his employment or incident to it.

(72 N.M. at p. 455) (internal citation omitted)

In Ledbetter v. Michigan Carton Co., 74 Mich. App. 330, 253 N.W.2d 753 (1977), the injured worker had a seizure in the company locker room and fell to the floor. As he landed, he hit his head directly on the concrete floor without hitting any other objects as

he fell. The Michigan court of appeals found the injury was not compensable and stated the following in its decision, in pertinent part:

> Although we recognize that a fall onto a softer surface may have lessened the impact, we are not convinced that the composition of the floor necessarily aggravated the harm. It cannot be said with certainty that had the fall occurred at a different location, away from the employer's premises, the injuries would have been less serious.
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> * * *
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> This uncertainty distinguishes a level floor case from cases where compensation has been allowed for idiopathic falls from platforms, ladders, or onto some type of machinery. The distinction needs to be drawn, however slight. The plaintiff has not shown that the decedent's injury arose "out of and in the course of" his employment.

(74 Mich. App. at p. 337)

In Evans v. Hara's, Inc., 123 Idaho 473, 849 P.2d 934 (1993), the claimant sustained a skull fracture when his head hit the level concrete floor as he fell while having a seizure. The claimant did not hit any objects or structures as he fell to the floor. The Idaho supreme court stated the following, in pertinent part, in its decision finding the claimant's injuries were not compensable:

> [Claimant's] injury was caused by circumstances personal to him: an alcohol withdrawal seizure during which he fell from a level surface and was injured when the back of his head struck the cement floor.
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> * * *
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> A fall onto a level surface precipitated by an alcohol withdrawal seizure is just as likely to happen at home, on the sidewalk, or in any other situs which a worker may frequent outside of the workplace. We therefore hold that an injury resulting from an idiopathic fall at the workplace does not arise out of employment and is not compensable under our worker's [sic] compensation system without evidence of some contribution from the workplace. In so holding, we are consistent with the majority of jurisdictions which have considered this question.

(123 Idaho at p. 480) (citing Larson, *The Law of Workers' Compensation Sec. 12.149(a) (1992))*

In Gates Rubber Co. v. Industrial Com. of Colorado, 705 P.2d 6 (Colo. 1985), the claimant had a seizure and fell directly to the concrete floor. There was no evidence the claimant slipped on the floor or hit any object or structure as he fell. The claimant died of an epidural hematoma just hours after the fall. The Colorado workers' compensation commission found that the concrete floor was an "extra hazard" of the

employment. In reversing the holding of the commission, the Colorado court of appeals stated the following, in pertinent part:

> We acknowledge that there are a minority of cases holding that a concrete floor or hard surface constitutes the "special hazard" of employment such that injuries resulting from idiopathic falls onto such surfaces are causally connected to the duties of employment. In our view, however, the majority of cases are better reasoned and support the contrary rule. (Citing to a Larson's Workmen's Compensation Law §12.14 (1984)) Level concrete surfaces, such as that upon which [claimant] struck his head, are encountered on sidewalks, parking lots, streets, and in one's home. Such a ubiquitous condition does not constitute a special risk of employment.

(705 P.2d at p. 7)

In Montanari v. Lehigh Portland Cement Co., 282 A.D. 1082, 126 N.Y.S.2d 180 (1953), the supreme court of New York appellate division held that a purely idiopathic fall onto a level concrete floor was not compensable because the "employment did not contribute in any substantial degree to the hazard of the fall." (282 A.D. at p. 1082) Relying on Larson, *The Law of Workers' Compensation,* the New York court noted that the claimant simply "fell to the concrete floor" and nothing more contributed to the claimant's injuries. (Id.)

In Williams v. Industrial Com., 38 Ill. 2d 593, 232 N.E.2d 744 (1967), the Illinois supreme court held that an idiopathic fall onto a level concrete floor was not compensable. The Illinois court stated the following, in pertinent part:

> This case can be characterized as one involving an idiopathic fall onto a level floor. Our court, along with a distinct majority of jurisdictions, denies compensation in such cases, as the employment does not significantly increase the danger of falling or risk of injury, which consequently must be considered personal.

(38 Ill.2d at pp. 595-596)

In Sudduth v. Williams, 517 S.W.2d 520 (Tenn. 1974), the claimant had an alcoholic seizure which caused him to fall to the floor at work. The claimant developed a subdural hematoma as a result of his head hitting the floor. Surgery was performed but, unfortunately, the claimant died from complications. In finding the claim was not compensable, the Tennessee supreme court stated the following, in pertinent part:

> Inevitably there arrive cases in which the employee suffers an idiopathic fall while standing on a level surface, and in the course of his fall, hits no machinery, bookcases, or tables. At this point there is an obvious temptation to say that there is no way of distinguishing between a fall onto a table and a fall onto a floor, since in either case the hazard encountered

> in the fall was not conspicuously different from what it might have been at home. A distinct majority of jurisdictions, however, have resisted this temptation and have denied compensation in level-fall cases. The reason is that the basic cause of the harm is personal, and that the employment does not significantly add to the risk.

(517 S.W.2d at p. 521)

In Winegar v. International Tel. & Tel., 1 Va. App.260, 337 S.E.2d 760 (1985), the claimant was walking on a level floor which had no objects or structures on it when she suddenly fainted. The claimant had a history of episodes where she would faint due to low potassium levels in her body. The Virginia court of appeals held that the claimant's fall was idiopathic in nature and that her injury did not arise out of her employment. The court stated the following, in pertinent part:

> Not only did the evidence prove another cause of the accident (an idiopathic fall) but the circumstances surrounding the fall negated any inference that the fall arose out of the employment. [Claimant] was walking on a level floor free from obstruction. Thus she did not prove that her employment was either "the origin or the cause of the fall."

(1 Va. App at p. 263)

In Harris v. Ohio Bureau of Workers' Compensation, 117 Ohio App.3d 103, 690 N.E. 2d 19 (1996), the claimant experienced a seizure, fell, hit his head on a level concrete floor and sustained a subdural hematoma. In finding the injury was not compensable in Harris, the Ohio court of appeals followed the Ohio supreme court's decision in Stanfield v. Indus. Comm., 146 Ohio St. 583 (1946), in which the Ohio supreme court stated the following, in pertinent part:

> In the instant case the floor was in no sense an added risk or hazard incident to the employment. The decedent's head simply struck the common surface upon which he was walking – an experience that could have occurred to him in any building or on the street irrespective of his employment. The fall resulted from the seizure alone and not from any circumstances of his employment. Concededly to entitle a claimant to compensation there must be an accidental injury not only in the course of but also arising out of the employment.

(117 Ohio App.3d at p. 105)

In Zuchowski v. United States Rubber Co., 102 R.I. 165, 229 A.2d 61 (1967), the petitioner blacked out and fell, hitting his head on a concrete floor. He sustained a fractured skull, subarachnoid hemorrhage and a cerebral concussion. The Rhode Island supreme court denied compensability of the claim holding that the composition of

the floor was not a determining factor as to whether there was a risk or hazard of the employment. The Rhode Island court stated the following, in pertinent part:

> We have held that in such circumstances there is no causal relationship between the injuries and the employment [when] an employee who, like the instant petitioner, fell and struck his head on the cement floor, [and he] was denied compensation . . . While we have always given a liberal construction to the workmen's compensation act, we cannot by judicial interpretation supply the necessary nexus between injury and employment . . . The fact that the floor where petitioner fell was cement does not, in our opinion, supply the necessary element of special risk which would make his injuries compensable. Floors of all nature and kind are a normal and customary part of one's life be one at home or work. We do not believe that the composition of the floor in itself should be [a] determining factor as to whether there is a special risk incident is present in one's employment. Such a criterion would send this court into the endless wilds of speculation. [O]ne could fall heavily on a cement floor without injury, while another might fall on soft sand and break a wrist. The workmen's compensation act does not provide that every workman who is injured while in his place of employment shall be compensated for his injury. We cannot accept the contention that a level floor made of cement or other hard substance in a place of one's employment is a special risk not encountered on a sidewalk, parking lot, or one's home where a similar surface exists. The mere coincidence that petitioner happened to fall in respondent's plant on the floor in and of itself does not transfer a non-compensable injury into one which will confer benefits under the compensation act. To hold as petitioner contends would convert workmen's compensation into a form of health insurance. This we cannot accept, as it was never the intent of the legislature to afford this type of protection to an injured workman. (citation omitted)

(102 R.I. at p. 174)

In Kraynick v. Industrial Com., 34 Wis.2d 107, 148 N.W.2d 668 (1967), the Wisconsin supreme court found that that the hard tile floor on which the claimant fell was not a zone of special danger. The Wisconsin court stated the following, in pertinent part:

> This court has held a concrete stairway to create a zone of special danger. Cutler-Hammer, Inc. v. Industrial Comm., 5 Wis.2d 247, 92 N.W.2d 824 (1958) . . . However, we have held that a level surface is not an area of special danger. Peterson v. Industrial Comm., 269 Wis. 44, 68 N.W.2d 538 (1955) (citation omitted)
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> There are numerous cases in other jurisdictions which have also denied compensation for idiopathic falls on level floors. Borden Foods Co. v.

> Dorsey, 112 Ga. App. 838, 146 S.E.2d 532 (1965); Prince v. Industrial Comm., 15 Ill. 2d 607, 155 N.E.2d 552 (1959); Riley v. Oxford Paper Co., 149 Me. 418, 103 Atl. 2d 111 (1954); Sears Roebuck & Co. v. Industrial Comm., 69 Ariz. 320, 213 Pac. 2d 672. (citations omitted)
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> The South Carolina supreme court covered the argument well in its decision in Bagwell v. Ernest Burwell, Inc., 227 S.C. 444, 454, 88 S.E.2d 611 (1955):
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> "We are not prepared to accept the contention that, in the absence of special condition or circumstance, a level floor in a place of employment is a hazard. Cement floors or other hard floors are as common outside industry as within it. The floor in the instant case did not create a hazard which would not be encountered on a sidewalk or street or in a home where a hard surface of the ground or a hard floor existed."

(34 Wis.at p. 113)

I find the authority and the arguments presented by defendants in support of the majority rule on this issue are more persuasive than the authority and arguments presented by claimant in support of the minority rule. I therefore affirm the deputy commissioner's finding that claimant failed to carry his burden of proof that on February 15, 2012, he sustained an injury which arose out of and in the course of his employment with defendant-employer as alleged. Because I affirm the deputy commissioner's finding that claimant failed to carry his burden of proof on the issues of causation and compensability, I affirm the deputy commissioner's finding that it all of the other issues raised by claimant in the arbitration proceeding are moot.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on January 13, 2016, is affirmed in its entirety.

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.

Signed and filed this 20th day of July, 2017.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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