BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NEEMA NSHIMIRIMANA, Claimant, vs. POST HOLDINGS, INC., d/b/a MICHAEL FOODS, INC., Employer, ARCH INSURANCE COMPANY, Insurance Carrier Defendant.	File No. 21004483.01 ARBITRATION DECISION Head Notes: 1106, 1402.30, 2907

STATEMENT OF THE CASE

Neema Nshimirimana, claimant, filed a petition in arbitration seeking workers' compensation benefits from Post Holdings, Inc. d/b/a Michael Foods, Inc., employer, and Arch Insurance Company, insurance carrier, as defendants. Hearing was held via Zoom on January 20, 2023.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision. The parties are now bound by their stipulations.

Claimant, Neema Nshimirimana and Joel Maniriho were the only witnesses who testified live at trial. Claimant testified via interpreter, Jocelyne Ininahazwe. The evidentiary record also includes joint exhibits 1-11, claimant's exhibits 1-20 and defendants' exhibits A-J. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on February 20, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury which arose out of and in the course of her employment on March 23, 2021.

2. Whether the alleged injury is the cause of permanent disability. If so, the extent of industrial disability she is entitled to receive.
3. Whether the alleged injury is the cause of temporary disability. If so, whether claimant is entitled to benefits from March 23, 2021 through October 10, 2022.
4. The appropriate date of maximum medical improvement.
5. Whether defendants are responsible for past medical expenses pursuant to Iowa Code section 85.27.
6. Whether claimant is entitled to reimbursement for an IME pursuant to Iowa Code section 85.39.
7. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all the evidence and testimony in the record, finds:

Claimant, Neema Nshimirimana, was 27 years old at the time of the hearing. She alleges she sustained an injury when she slipped and fell at work on March 23, 2021. Defendants, Post Holdings, Inc., d/b/a Michael Foods, Inc. (hereinafter "Michael Foods"),do not dispute that Neema fell at work. However, defendants do dispute that she slipped and sustained a compensable injury.

Neema was born in Burundi and speaks Kirundi. She attended school in Tanzania through the twelfth grade. She moved to the United States in 2015. Iowa was the first place Neema lived in the United States. She moved here to live with her uncle, Joel Maniriho and his family. (Transcript pages 12-14)

Neema held jobs with a couple of different employers in the U.S. before she began working for Michael Foods, Inc., in 2020. Neema alleges she sustained an injury that arose out of and in the course of her employment on March 23, 2021. At that time, Neema worked on the bread line. Her job involved standing for her entire shift. She testified that her job was to check and see that the breads were in good shape. The bread line is the cold line. Neema testified that her job duties included cleaning the ice to prevent it from falling on the bread. Her duties also included helping other people put bread into boxes. (Tr. pp. 21-22)

At the hearing Neema was asked to describe her injury. She testified:

> So what happened I was doing my normal job, so as I was cleaning off the ice to prevent it from damaging the bread, because that was my job. So because of the ice, the floor was very slippery, so when I was cleaning, I slipped and fell on the floor and my head hit the floor first. What happened after that, I don't recall because I had to be taken to the hospital.

(Tr. p. 22, lines 11-19)

Defendants took Neema's deposition on January 5, 2023. In her deposition Neema testified about her injury. The transcript states:

> Q. (By Mr. McConkey) Okay. And so you actually remember your feet slipping on ice on that day?
> A. So yes. I remember that, because I was done with the cleaning and I was turning back to, you know, to leave that area. My left leg slipped, and that's how I fell on the floor.
> Q. So you recall actually moving your left leg and foot, and that's when you slipped?
> A. Yes. I know that I slipped as I was trying to go back.

(Defendants' Exhibits H, page 9, lines 13-21)

During her deposition testimony Neema verified that she only fell one time on the injury date in question. (Def. Ex. H, pp. 10-11)

The deposition of Emily Savage (formerly known as Emily McCullough) was taken on January 10, 2023. Emily testified that at the time of the injury in question she was working at Michael Foods as a quality technician. She did not witness the injury in question; she was in the office and a worker came in and said they needed to call 911 because someone had passed out. Emily verified that she gave a written statement on March 23, 2021. (Def. Ex. J, pp. 4-5) The written statement signed by Emily states:

> 3 of the pack ladies informed me that Neema has not been feeling good the past week or two. They also let me know that they haven't seen her eat much the past couple days. I went over to the line afterwards and felt around the area she fell. It was not slippery. I was not there at the time.

(Def. Ex. A, p. 2)

In her deposition Emily testified that approximately 30 minutes after the injury she went to check the floor where Neema fell. According to Emily, she looked around and felt the floor and it was dry. (Def. Ex. J, p. 7) Emily was asked if the area where Neema fell was an area where there might be some sort of moisture. She testified as follows:

> Q. Is that an area where there might be some sort of moisture?
> A. Not on that production line. She was over on line 3. We have seen it on line 1 and 2, but not on line 3.
> Q. Do you recall it ever having moisture problems on the floor there?
> A. Not - - not that I recall on that line, no.
> Q. What - - when did you first start working at Michaels Foods?
> A. I started working there like April of 2022 - - or no, sorry, 2020.
> Q. Did you ever actually work in that area?
> A. Yes, I'm - - I had to go over there, grab samples pretty much probably five to ten times per shift.

Q. How long was the shift?
A. It was about 8 to 10 hours.
Q. So was that part of your job duties, to go over there and check that area after the fall?
A. Yes. Not really, but I did go over there to check it, because I had to go check to make sure that it was safe conditions.
Q. And what would you have done if there was moisture?
A. We would set up cones so that people wouldn't walk there and inform people on that line to stay away and be careful around that area.
Q. Do you recall setting up cones in that area before?
A. No, only on the other production lines, never that line.
Q. What about after, have you ever set up cones there after?
A. No.

(Def. Ex. J, p. 7, lines 22 – p. 9, lines 6)

Defendants have offered compelling videos of the injury in question. (Def. Ex. I) Defendants' exhibit I contains two videos. One video is labeled, "Video 1" and is approximately 33:33 minutes long. This video shows an overhead view of the room Neema and two other workers were in at the time of the injury. Video 1 shows Neema dropping backwards to the ground at approximately the 9:40 minute mark. Immediately prior to the fall Neema's legs and feet do not move; she is standing still when she falls backward. The two co-workers immediately leave the room to get help. Neema lays motionless on the ground and at approximately the 11:30 minute mark several unidentified Michael's Foods workers carry her out of the room. Neema appears to be unconscious this entire time. After Neema is carried out of the room, several workers enter and exit the room. From approximately 18:27 to 19:45 in the video workers place cones around the area where Neema was working. Around the 26:00 minute mark several workers gather around the area where Neema was working, but it does not appear that anyone takes any photographs during this time. (Def. Ex. I, Video 1)

The other video contained in defendants' exhibit I is labeled "Video." The "Video" is approximately 15 second long and is a closer view of the injury in question. Sadly, both videos show Neema falling backwards and striking her head on the floor. Contrary to Neema's testimony, both videos show Neema standing completely still and then falling backwards onto the floor. The videos show that Neema is not moving her feet in any way at the time of the injury. Rather, her feet appear to be completely still. I do not know why Neema fell backwards. However, I find that Neema did not slip.

In both videos there appears to be an area of white near Neema's feet. Neema testified that the white substance near her feet was ice. During cross-examination, defendants asked Neema if the white area could be extra lighting because there was a shadow from where she was standing; Neema reiterated the white area was ice. (Tr. p. 49)

Claimant's exhibit 9 is a photograph of a work area. Neema does not know who took the photograph or when it was taken. (Tr. p. 24) Neema testified the photograph is

of the location she was working at the time of her fall and that the white substance on the floor was ice. (Tr. p. 24) Neema did not explain why she believes this is her workstation, rather than a different workstation in the plant.

Joel Maniriho, Neema's uncle testified at the hearing. He believes Neema's coworker who picked her up while she was unconscious took the photograph. According to him, several days after Neema was discharged from the hospital the photograph was on her phone. Joel testified that the coworker "took the picture once he picked Neema up, yes." (Tr. p. 54, lines 13-14) It is unclear who Joel is referring to when he says the coworker who picked Neema up while she was unconscious because Video 1 show that several unidentified coworkers helped pick up Neema and at least 2 coworkers helped carry her out of the room. (Def. Ex. I, Video 1, approx. 11:28 to 12:02) Based on my viewing of the video evidence, it does not appear that any of those workers took a photograph. Because there is no reliable evidence about who took the photograph, when the photograph was taken, or even what production line the photograph is of, I give no weight to claimant's exhibit 9.

After considering all the evidence, I do not know if the white area in the videos is ice, or a difference in lighting. I acknowledge that workers setting up cones around the area where Neema fell could suggest the presence of ice. However, even if I accept Neema's contention that the white area is ice, I find that the ice did not cause her to slip. The videos clearly demonstrate that Neema did not slip. I do not know what caused her to fall backwards, but she did not slip. I find Neema was standing on a level surface and fell onto the same level surface. I further find that she did not slip; she was standing and not moving her feet when she suddenly dropped backwards.

Additionally, Neema argues that the records from the Norwalk Fire Department support her contention that she slipped. (JE1, p. 1; Claimant's brief, p. 1)The "Narrative" section of the fire department's records state in pertinent part:

> Crew was waved down and escorted to pt inside the front door in the cafeteria. Pt was found laying in a supine position, unresponsive, and accompanied by coworkers. Coworkers were asked what happened and a gentleman stated she slipped on a *[sic]* ice patch in the freezers and hit her head. The gentlemen proceeded to say that she got up and walked to the cafeteria and collapsed and 911 was called.

(JE1, p. 1)

I find that the history provided to the fire department is not reliable. Video 1 clearly shows that Neema did not slip. Video 1 also clearly shows she did not get up and walk out of the room. (Def. Ex. I) Additionally, Neema testified that that she only slipped and fell one time on the injury date in question. (Def. Ex. H, pp. 10-11) Thus, I find the history given to the fire department by an unidentified male coworker is incorrect.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

The central dispute in this case is whether the claimant sustained an injury arising out of and in the course of her employment on March 23, 2021.

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" referred 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. 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 the instant case, defendants dispute that the injury in question arose out of and in the course of employment. Claimant contends the injury did arise out of the course of her employment because she slipped. (Claimant's Brief, p. 1)

Initially, it should be noted that the Iowa workers' compensation statutes are to be interpreted liberally for the benefit of the injured worker. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 188 (Iowa 1980). However, the workers' compensation statutes are not general health insurance policies for all injuries that occur on the employer's premises. Miedema, 551 N.W.2d at 312. Claimant must demonstrate that the injury was a rational consequence of a hazard connected with the employment. Id. at 311.

The Iowa Supreme Court has indicated that the "arising out of" element of proof, the injury must not have coincidentally occurred while at work. Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). Injuries that occur on the employer's premises do not necessarily arise out of that employment. Id. at 311. The Supreme Court has held that for an injury to be compensable, 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.

In 2007 the Iowa Supreme Court adopted the actual-risk rule:

> If 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. And it makes no difference that the risk was common to the general public on the day of the injury.

Lakeside Casino v. Blue, 743 N.W.2d 169, 174-75 (Iowa 2007)(quoting Hanson v. Reichelt, 452 N.W.2d 164, 168 20 A.L.R.5th 952 (Iowa 1990)). With limited exceptions, the Court abandoned the requirement that the employment subject the employee to a risk or hazard that is greater than that faced by the general public. Id.

As set forth in the Iowa Practice Series, the law has continued to develop since Lakeside.

> In 2018, the Iowa Supreme Court clarified that the actual-risk rule adopted in *Lakeside* did not overturn the "Increased Risk Standard," which is applicable for idiopathic falls in the work place. In *Bluml v. Dee Jay's Inc.*, the Iowa Supreme Court held that an idiopathic fall may be compensable if the condition of the employment "increased the risk of injury" and that is a question of fact, not a question of law.
>
> In response to *Bluml*, in 2019, the Iowa legislature amended Iowa Code section 85.61 to state that "personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under [Chapter 85]."

§ 54:10. Arising out of and in the course of employment, 3 Ia. Prac., Methods of Practice § 54:10.

An idiopathic fall is defined as "a fall due to the employee's personal condition." Bluml v. Dee Jay's Inc., 920 N.W.2d 82, 86 (Iowa 2018). Defendants introduced evidence that claimant had not been feeling well in the days leading up to the fall. However, this evidence is scant. The greater weight of the evidence suggests claimant fell for no specifically identifiable reason, making it unexplained. See Bartle v. Sidney Care, Inc., 672 N.W. 333, 2003 WL 22346956 at *2 (Iowa Ct. App. 2003 (table)("We believe that in a case such as this, where the claimant slips or trips or falls for no specifically identifiable reason, that the cause of the fall and resulting injury is not idiopathic, but rather neutral or unexplained.")

At the time of the March 23, 2021 injury Iowa Code Section 85.61 Definitions stated, "[p]ersonal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter." Iowa Code Section 85.61(7)(c) (2021).

Under the plain language of the amended statute, unexplained falls from a level surface onto the same level surface are not compensable. Based on the above findings of fact, I conclude that claimant did not slip. I conclude claimant was standing still on a level surface when she suddenly fell backwards onto the same level surface. Typically, when a claimant is injured while performing work duties, within a period of employment when a worker is expected to be at work, and at the employer's place of business the injury is deemed to have occurred in the course of employment. However, by statutory definition unexplained falls from a level surface onto the same level surface do not arise

out of and in the course of employment and are not compensable. Thus, under the plain language of Iowa Code section 85.61, claimant's injury did not arise out of and in the course of her employment and is not compensable. Claimant has failed to demonstrate by a preponderance of the evidence that she sustained a compensable injury under chapter 85, Code of Iowa.

Claimant is seeking an assessment of costs against the defendants. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. 876 IAC 4.33. I conclude that claimant was not successful in her claim and therefore exercise my discretion to not assess costs against the defendants. Each party shall bear their own costs.

Because claimant failed to prove by a preponderance of the evidence that her injury arose out of and in the course of her employment all other issues are rendered moot.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1 (2) and 876 IAC 11.7.

Signed and filed this 6th day of June, 2023.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Greg A. Egbers (via WCES)

Nathan Robert McConkey (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.