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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001195-WC

GEOFFREY HAMPTON — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-09-78569

INTECH CONTRACTING, LLC;
HON. LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR, CHIEF JUDGE; LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Geoffrey Hampton filed a workers' compensation claim against his employer, Intech Contracting, LLC, alleging that on September 9, 2009, he fell from a bridge and was severely and permanently injured within the scope and course of his employment. The ALJ dismissed the claim finding that although

the injury occurred in the course of his employment, the injury did not arise from his employment. After his petition for reconsideration was denied, Hampton appealed to the Workers' Compensation Board, which affirmed. Hampton appealed to this Court. Because the issue presented is limited to whether Hampton's injuries arose from his employment, we recite only the testimony helpful to its resolution.

In October 2008, Hampton, who is diabetic and insulin dependent, began working for Intech as a laborer. Intech is primarily a company that resurfaces, maintains, and repairs bridge structures. On the night of the injury, the crew began resurfacing a Muhlenberg County bridge deck at 6:00 p.m. When their shift was completed, the crew was to return to a local hotel. All work was completed between a four-foot tall concrete barrier wall placed in a position to divide the travel lanes from the work area and an outside four-foot high bridge guardrail placed to prevent cars from traveling off the bridge. The crew worked only on the bridge deck. Although it is disputed whether Hampton accidentally fell or jumped from the bridge, it is undisputed that he incurred serious permanent injuries when he fell approximately sixty feet.

Hampton has no recollection of September 9, 2009. As a result, the testimony consisted primarily of his co-workers. However, he testified that he could not have jumped off the bridge and attributed the fall to a hypoglycemic attack. He agreed that the bridge guardrails were approximately four-feet in height and would prevent cars and people from unintentionally falling off the bridge.

Neil Perraut, a job foreman, testified that at approximately 8:00 p.m., Hampton stated that he needed something sweet to increase his blood sugar. He was permitted to get something from his truck and, afterward, reported that he was "feeling pretty good." Around midnight, Perraut told his crew that after they strapped down unused materials, they would go to the hotel. He testified that Hampton reported that his back and knees were hurting and was told to sit in the truck. Perraut recalled that approximately thirty minutes later, Hampton shouted a profanity and walked from the barrier wall to the bridge guardrail. He witnessed Hampton hold the guardrail, throw his legs over the guardrail and jump. Perraut could offer no explanation for Hampton's action but did not believe it was a suicide attempt.

Co-worker David Snipes testified that Hampton had not been feeling well and had eaten sugary snacks but had left his insulin at the hotel. At approximately midnight, Hampton reported not feeling well. The two continued down the bridge to where a lowboy trailer was parked and Hampton waited while Snipes helped strap down a load of metal. Snipes testified that Hampton was leaning on the traffic barrier and then climbed onto the trailer. Snipes continued his work until he heard a co-worker exclaim that Hampton had gone over the side of the bridge. He testified that he did not believe Hampton attempted suicide.

Clinton O'Brien was also at the job site on September 9, 2009, and testified that the work was performed only on the bridge deck. He was

approximately ten feet from Hampton when he heard Hampton shout a profanity and walk toward the river side of the bridge and jump.

Ronnie Peacock confirmed his co-worker's testimony. He was in the vicinity when he heard Hampton shout and then observed him walk to the guardrail and climb over the rail.

Bryon Ogger, vice president of Intech, has twenty-years' experience in safety management. He testified that all work on the Muhlenberg bridge project was between the concrete barrier wall and the bridge side rail. Further, he testified that because the forty-seven inch guardrail was of sufficient height to keep a workman from falling, there was no need for fall protection.

Paramedic Michael Cornett reported to the job site. He testified that Hampton had a blood glucose reading within normal limits. Further, he testified that at the scene he had to climb over the bridge guardrail to reach Hampton.

The remaining medical and lay testimony focused on why Hampton climbed over the guardrail and plummeted over sixty feet. Lay witnesses testified regarding Hampton's personality characteristics and mental state. Medical testimony was presented regarding his treatment for diabetes and its symptoms. There was further evidence that after his fall, Hampton's blood sugar level was within the normal range and that traces of illegal drugs were found in his system.

The ALJ made the following findings of fact:

> After examination of this extensive record and consideration of the testimony of the witnesses, I am able to make some findings of fact without difficulty. First, I

> am persuaded that the plaintiff was not attempting suicide based upon any problems he might have had in his family or social life. Secondly, I am also convinced that the plaintiff did not accidentally fall from the bridge in the traditional sense. Also, I am persuaded that at the time of this event the plaintiff was an insulin-dependent diabetic patient who frequently had trouble controlling that condition. Finally, the evidence is persuasive that the cocaine and marijuana residuals found in the plaintiff's bloodstream did not contribute to this event.
>
> Based upon the opinions of his treating physician, Dr. Hood, I am convinced that the plaintiff was having difficulty with low blood sugar the night of the accident and began experiencing symptoms of hypoglycemia. I am further convinced that the plaintiff negligently failed to take the necessary steps to ward off a hypoglycemic reaction. That failure led to substantial impairment of the plaintiff's mental alertness and ability to make rational decisions. This condition caused the plaintiff to become extremely disoriented to the extent that he voluntarily approached the bridge, climbed up onto the guard rail, and descended over the edge, falling over 60 feet to the earth below. I find accordingly.

After an analysis of the applicable law, the ALJ dismissed the claim because Hampton's injury did not arise out of his employment and was not part of the positional risk in which his employment placed him. Deferring to the ALJ's findings of fact and using the same analysis, the Board affirmed.

Hampton presents three issues, all of which are interrelated. The first, and determinative, is whether Hampton's injuries arose out of his employment.

The standard for review in workers' compensation cases has been frequently recited. The ALJ is the exclusive finder of fact and, therefore, determines the quality, character, and substance of the evidence and is the sole

judge of the weight and inferences to be drawn. *Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997). The ALJ's findings of fact are conclusive upon review unless so unreasonable under the evidence that contrary findings are compelled as a matter of law. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986).

Hampton had the burden of proof before the ALJ to prove every element of his claim, including the occurrence of an injury under the Workers' Compensation Act. *Durham v. Peabody Coal Co.*, 272 S.W.3d 192, 196 (Ky. 2008). Because Hampton was unsuccessful, the sole issue on appeal is whether the evidence "compelled a finding in his favor." *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984).

Under Kentucky's workers' compensation law, a compensable injury must be "work-related" and "arise out of and in the course of employment." KRS 342.0011(1). "Arising out of" and "in the course of employment" are distinct elements: The former refers to the cause or source of an accident while the latter refers to the time, place, and circumstances of an accident. *AK Steel Corp. v. Adkins*, 253 S.W.3d 59, 63 (Ky. 2008). There is no dispute that on September 9, 2009, Hampton was injured in the course of his employment with Intech. The dispute is whether there is sufficient evidence to support the ALJ's finding that Hampton's injury did not arise out of his employment.

As explained in *Vacuum Depositing, Inc. v. Dever*, 285 S.W.3d 730 (Ky. 2009), a determination of whether an injury arises out of the employment requires that the type of injury be identified.

> Professor Larson explains that an analysis of whether a workplace injury arises out of the employment begins by considering the three categories of risk: 1.) risks distinctly associated with employment; 2.) risks that are idiopathic or personal to the worker; and 3.) risks that are neutral. Larson notes that unexplained fall cases begin with a completely neutral origin of the mishap, while idiopathic fall cases begin with an origin which is admittedly personal. The latter group involves an idiopathic or personal factor that would have resulted in harm regardless of the employment, such as a pre-existing disease or physical weakness, personal behavior, or a personal mortal enemy. (internal footnotes omitted).

Id. at 733. We agree with the Board's observation that this is not an unexplained fall case. Although it remains undetermined why Hampton climbed over the guardrail, the explanation for the fall itself is that Hampton climbed over the guardrail and ultimately fell to the ground.

The ALJ found that Hampton was disorientated as a result of a hypoglycemic attack, a condition purely personal in nature and, therefore, his fall is properly characterized as idiopathic. *Workman v. Wesley Manor Methodist Homes,* 462 S.W.2d 898 (Ky. 1971). An idiopathic fall is compensable under our workers' compensation law under the circumstances described in *Stasel v. American Radiator & Standard Sanitary Corp*., 278 S.W.2d 721, 723 (Ky. 1955):

> Accidents arising out of the employment are those in which it is possible to trace the injury to the nature of the employee's work or to the risks to which the

> employer's business exposes the employee. The accident must be one resulting from a risk reasonably incident to the employment. It arises out of the occupation when there is a causal connection between the conditions under which the servant works and the resulting injury. It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. (Internal citations omitted).

In *Stasel*, the claimant suffered an epileptic seizure while standing next to a hot stove and either struck the stove or scraped his arms in hot sand causing serious abrasions. *Id*. at 722-23. The Court held that the injury was compensable because there was a causal connection between the conditions of the employment and the injury. *Id.* at 724.

Quoting Larson, Workmen's Compensation Law, § 12.14, in *Workman*, the Court explained that to be compensable, the employment must have increased the risk of injury from an idiopathic fall: "The idiopathic-fall cases begin as personal-risk cases. There is therefore ample reason to assign the resulting loss to the employee personally." *Id*. The Court continued:

> Our discussion thus far presupposes, of course, that an injury from a fall resulting during the course of the employment but solely from a cause or causes to which the work is not a contributing factor is not compensable. This may appear to draw a fine line of distinction from the positional risk cases such as *Corken v. Corken Steel Products, Inc*., Ky., 385 S.W.2d 949 (1965), based on the theory that the injurious incident would not have occurred except for the employee's presence at the particular place where it happened. However, it is the basic rule, on which there is general agreement. Larson, Workmen's Compensation Laws,

> 12.11. The positional risk theory applies in this type of case only 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.

Id. at 901-02. (Internal quotations and footnote omitted).

Similar reasoning was applied in *Indian Leasing Co v. Turbyfill*, 577 S.W.2d 24 (Ky.App. 1978). While working, Turbyfill had a heart attack and fell twelve feet from a trailer. The Court again quoted Larson and emphasized that Turbyfill's employment placed him atop the loaded trailer which increased the risk of injury from a fall.

> In his discussion of idiopathic fall cases, Larson sets forth the increased danger rule:
>
> > When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.
> >
> > The basic rule, for which there is now general agreement, is that the effects of such a fall are compensable if the employment placed 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.

Id. at 26. Thus, the ultimate question is whether Hampton's employment placed him in a position of risk.

We agree with the Board and the ALJ that Hampton's work on the deck of the bridge did not place him in a position of risk. Although he was atop the bridge deck, he did not fall from the bridge deck. His fall was caused by his actions unrelated to his employment: He placed himself in a position of risk when he climbed over the guardrail. We agree with the Board that Hampton's injuries did not originate from a risk connected with his employment and did not flow from his employment as a "rational consequence." *Stasel*, 278 S.W.2d at 723.

Hampton's remaining arguments are that the ALJ and the Board improperly placed fault on Hampton, and that the Board failed to acknowledge that Hampton's actions were the result of disorientation from a hypoglycemic episode. We have reviewed the ALJ's and the Board's opinions and orders and conclude that both accurately express the law as applied to the facts. Therefore, Hampton's arguments are meritless.

The opinion and order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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