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ACTION.

Supreme Court of Kentucky

2011-SC-000741-WC

GEOFFREY HAMPTON

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
CASE NO. 2011-CA-001195-WC
WORKERS' COMPENSATION NO. 09-78569

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

APPELLEES

MEMORANDUM OPINION OF THE COURT

REVERSING AND REMANDING

Appellant, Geoffrey Hampton, appeals the dismissal of his claim for workers' compensation benefits based on the finding that his injuries did not arise out of his employment for Appellee, Intech Contracting, LLC. Hampton presents two arguments on appeal: 1) that his injuries did arise out of his employment because he would not have fallen from a bridge but for the fact his job required him to be on the bridge; and 2) the Administrative Law Judge erred when he barred his claim for benefits based upon a voluntariness exclusion. For the reasons set forth below, we reverse the decision of the Court of Appeals and remand this matter back to the Administrative Law Judge ("ALJ") for further proceedings consistent with this opinion.

Intech is primarily in the business of resurfacing, maintaining, and repairing bridges. Intech accepted a project in September 2009 to resurface the deck of a bridge on the Western Kentucky Parkway which crossed the Green River. Hampton was employed by Intech as a laborer for this project.

The project's work area was a section of the bridge deck cordoned off between two four-foot tall barriers. One barrier was a concrete wall placed to separate the open lane of traffic from the work area and the other was a pre-existing permanent guardrail to prevent cars from traveling off the bridge. Testimony in this matter indicates that both barriers were tall enough to prevent a worker from accidentally falling over them. Since the focus of the project was to resurface the bridge deck, there was no need for any worker to climb on to or over either barrier.

On the evening Hampton was injured, the Intech crew began their work at 6:00 p.m. to avoid the heat of the day. Due to the severity of his injuries, Hampton does not remember any of the evening's events and thus all of the information about what transpired comes from the testimony of others.

At about 8:00 p.m., Hampton told his co-workers he needed to eat something sugary to increase his blood sugar. Hampton suffers from type I diabetes and is insulin dependent. His co-workers were aware that Hampton was diabetic and periodically suffered from hypoglycemic attacks which led him to become disoriented. One co-worker testified that a few weeks before Hampton's injury on the bridge occurred, Hampton became so disoriented from low blood sugar that he drove a company truck at a different job site the wrong

direction on an interstate on-ramp. Hampton's low blood sugar and subsequent confusion however was usually abated by his eating or drinking something containing sugar. After telling his co-workers he needed something for his blood sugar, Hampton ate a snack and afterward reportedly stated he was "feeling pretty good." However, Hampton unfortunately forgot to bring his insulin to the job site that evening and was not following his treating physician, Dr. Hood's advice on how to control his diabetes.

At about midnight, Hampton again reported not feeling well. He told one of the job foremen that his back and knees hurt him and the foreman instructed Hampton to sit in a truck because the crew would be heading soon to their hotel for the night. Other witnesses report that Hampton began to act strangely and walk around the job site.

At approximately 1 a.m., Hampton screamed a profanity and jumped over the bridge's guardrail. To jump off the bridge, Hampton had to climb up onto the barrier and then fall over the side. A job foreman testified that Hampton was so disoriented that he might have believed the barrier was actually a tractor-trailer truck which he would have had to climb up into to leave the job site. The foreman also testified that it appeared Hampton tried to grab onto the barrier as he went over the side, indicating he did not want to fall.

Hampton fell sixty-two feet to the ground below causing serious injuries to himself.¹ As paramedics arrived on the scene, Hampton's co-workers told them about his hypoglycemic attacks. One of the paramedics tested Hampton's blood sugar and found it to be eighty. A blood sugar reading of eighty is within the lower part of what is considered a normal blood sugar range. However, expert testimony was provided that severe trauma, like what Hampton suffered, can cause a jump in blood sugar. Thus it is unknown exactly what Hampton's blood sugar was at the time he jumped off of the bridge. Further testing also revealed trace amounts of cocaine and marijuana in Hampton's blood stream.

Hampton filed for workers' compensation benefits due to his injuries.

The ALJ reviewed the case, and 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

¹ A physician who treated Hampton after his fall stated that he received treatment for a closed head injury, left distal tibia fibula fracture, multiple rib fractures, right kidney contusion, bilateral pneumothorax, C1-C2 fractures, L1-L4 burst fractures, T4 T8 and T12 burst fractures, talar neck fracture, right hemiplegia, acute respiratory failure, blood loss anemia, rhabdomyolysis, feeding difficulty, ventilator-assistant pneumonia, left lower extremity site infection, bilateral deep vein thromboses, and leukocytosis.

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 guardrail, and descended over the edge, falling over 60 feet to the earth below. I find accordingly.

However, despite finding that Hampton's hypoglycemia was likely the cause of the incident, the ALJ dismissed his claim for benefits because he found Hampton's injury did not arise out of his employment and was not part of the positional risk in which his employment placed him. In so ruling, the ALJ found that this matter was distinguishable from both *Stasel v. American Radiator and Standard Sanitary Corp.*, 278 S.W.2d 721 (Ky. 1955) and *Indian Leasing Company v. Turbyfill*, 577 S.W.2d 24 (Ky. App. 1978), because those cases involved accidents which were totally involuntary. The ALJ believed Hampton voluntarily took an action "which would almost guarantee certain injury or death." The Workers' Compensation Board and the Court of Appeals both affirmed the ALJ's ruling based on the same reasoning.

Hampton now appeals to this Court arguing that his injuries did arise out of his employment because if not for his job, he would not have been on the bridge and therefore not severely injured by falling off of it. A determination of whether an injury arises out of one's employment requires that the type of injury be identified. As stated in *Vacuum Depositing, Inc. v Dever*, 285 S.W.3d 730, 733 (Ky. 2009):

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). The ALJ in this matter found that Hampton was disoriented due to a hypoglycemic attack and that this caused Hampton to climb over the guardrail and jump off the bridge. This conclusion is adequately supported by the record. Since hypoglycemia is a purely personal condition, Hampton's fall is classified as idiopathic.

An idiopathic fall is compensable in certain situations under our workers' compensation law. In *Stasel*, an award of benefits was upheld for burns caused when an individual had an idiopathic epileptic seizure causing him to fall onto a hot stove. *Stasel* held that:

[a]ccidents 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 casual 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.

Stasel, 278 S.W.2d at 723 (citations omitted). Therefore even though in *Stasel* there was no evidence that the workplace was unsafe, since the peculiar hazards of the worker's employment were a contributing factor to his injuries, there was a sufficient "causal connection" to award benefits. *Id.* at 724.

In *Workman v. Wesley Manor Methodist Homes*, 462 S.W.2d 898, 901-902 (Ky. 1971) it was held that for an idiopathic fall to be compensable, the employment itself must have increased the risk of injury. Expanding on that concept, in the case of *Turbyfill*, the Court of Appeals stated that:

[l]iability under the positional risk theory for idiopathic falls is limited to those cases in which the employment placed the employee in a position increasing the dangerous effects of the idiopathic fall. The *Stasel* case was treated as having been decided under the positional risk theory.

Turbyfill, 577 S.W.2d 27-28. Accordingly, *Turbyfill* granted a worker's widow death benefits because the worker died after falling off of a tractor trailer due to a myocardial infarction while tying down a load.

The question in this matter becomes whether Hampton's work on the deck of the bridge placed him in a position of risk which contributed to his severe injuries. The ALJ, Board, and Court of Appeals all held that Hampton's job was solely located on the bridge deck, and since he voluntarily climbed over the guardrail he personally placed himself in a position of risk. We disagree.

There is little doubt that Hampton's "employment placed [him] in a position increasing the dangerous effects of the idiopathic fall." *Turbyfill*, 577 S.W.2d at 27-28. While there is no indication from the record that the bridge worksite was unsafe, whether Intech maintained a safe workplace is irrelevant to this analysis. There was absolutely no indication in either *Turbyfill* or *Stasel* that the workplace in which the injury occurred was unsafe, and yet benefits were awarded because the employment of the worker increased the risk of his

injury. If Hampton had not been working on the bridge, the fall caused by his hypoglycemic condition would not have been as severe.

Additionally, the fact that Hampton took action to climb over the guardrail and fall off of the bridge does not make him ineligible to receive benefits. There is sufficient evidence to support the conclusion that it was Hampton's hypoglycemia which caused him to climb over the guardrail due to confusion and not a voluntary attempt at suicide. When Hampton suffered one of his diabetic episodes, his personality would change from being a content family man to someone who was irritable and angry. Additionally, it is well documented that when Hampton suffered a hypoglycemic attack he would become disoriented. Indeed, as testified to by one of Hampton's co-workers, he once became so confused during one of his hypoglycemic attacks that he drove the wrong direction on an Interstate on-ramp. During another attack, Hampton became unnaturally irate and hateful toward one of his friends, until he was able to eat a snack which raised his blood sugar. Therefore, the ALJ's conclusion that Hampton's fall was due to confusion caused by hypoglycemia instead of a suicide attempt is supported by substantial evidence.

For the reasons set forth above, we find that Hampton is eligible for workers' compensation benefits. We accordingly, reverse the Court of Appeals and remand this matter back to the Administrative Law Judge for proceedings consistent with this opinion.

Minton, C.J.; Abramson, Cunningham, Noble, Scott, and Venters, JJ., sitting. All concur.

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