MICHAEL G. BLAKESLEE, JR. *v.* PLATT BROTHERS AND COMPANY ET AL.
(SC 17421)

Sullivan, C. J., and Borden, Norcott, Katz, Palmer, Vertefeuille and Zarella, Js.*

Argued October 18, 2005—officially released August 1, 2006

James P. Brennan, for the appellant (plaintiff).

Jennifer A. Hock, for the appellees (defendants).

Opinion

BORDEN, J. The plaintiff, Michael G. Blakeslee, Jr., appeals from the decision of the workers' compensation review board (board) affirming the decision of the workers' compensation commissioner for the fifth district (commissioner). The commissioner had dismissed the plaintiff's application for benefits for injuries the plaintiff sustained when his coworkers physically had restrained him after he suffered a noncompensable seizure. The plaintiff claims that the board improperly concluded that his injuries resulting from the restraint were not compensable under the Workers' Compensation Act (act), General Statutes § 31-275 et seq., because they did not arise out of his employment. We agree with the plaintiff and reverse the board's decision.

The plaintiff filed a workers' compensation claim, which the commissioner dismissed. The plaintiff

appealed to the board, which affirmed the commissioner's decision. This appeal followed.[1]

The commissioner found the following facts, which are undisputed. On February 13, 2002, the plaintiff suffered a grand mal seizure while he was at work for the named defendant, Platt Brothers and Company.[2] The seizure itself was not a compensable injury. As a result of the seizure, the plaintiff fell to the ground, unconscious, near a large steel scale in his workplace. As the plaintiff regained consciousness, he began flailing around, swinging his arms and kicking his legs. Mike Noel, a coworker, witnessed this incident and summoned two other coworkers, Bob Grenick, whom Noel referred to in his testimony as a paramedic, and Emo Bimmler, a factory foreman. The three men, in an attempt to prevent the plaintiff from injuring himself, as well as others, restrained the plaintiff. They held the plaintiff's arms down to the floor while the plaintiff attempted to break free from the restraint. As a result, the plaintiff suffered dislocations of both of his shoulders. The plaintiff initially sought treatment and ultimately surgery from Michael Sermer, an orthopedic surgeon. Sermer thereafter reported that he had concluded, on the basis of a reasonable medical certainty, that the plaintiff's shoulder dislocations were a result of the restraint, not the seizure.

The commissioner identified as the sole issue regarding the plaintiff's entitlement to workers' compensation benefits whether the plaintiff's injuries arose out of his employment. The commissioner made the following determinations based on his factual findings: (1) "The chain of causation which resulted in the [plaintiff's] shoulder injuries was set in motion by the [plaintiff's] grand mal seizure"; (2) "The seizure did not arise out of the [plaintiff's] employment"; and (3) "The [plaintiff's] injuries were caused by the intervention of other employees in his workplace who were trying to assist the [plaintiff]." In light of these determinations, the commissioner concluded that the injuries did not arise out of the plaintiff's employment and dismissed his claim for benefits.

The plaintiff then appealed from that decision to the board, which affirmed the commissioner's decision. The board noted the well established two-prong requirement of compensability—an injury arising out of and in the course of employment—and further noted that the latter was undisputed, given that the plaintiff had suffered the seizure during work hours, while fulfilling his work duties. Turning to the disputed issue, the board noted that, for an injury to arise out of employment, the proximate cause of the injury must be set in motion by the employment, not some other agency. The board concluded that, because the plaintiff's original injury—the seizure—was not compensable, the resulting injury from his coworkers' application of first aid similarly

was not compensable. The board analogized the present case to *Porter* v. *New Haven*, 105 Conn. 394, 397, 135 A. 293 (1926), wherein this court had concluded that a claimant's injury was not compensable when a visitor to the workplace had pushed the claimant, causing him to strike his head on a concrete floor. The board further concluded that the first aid was applied for the plaintiff's exclusive benefit and, accordingly, could not be deemed to arise out of his employment.

The plaintiff claims that the board improperly concluded that his injuries did not arise out of his employment. We agree with the plaintiff that his injuries arose out of his employment and, therefore, are compensable.

We begin by underscoring that the facts found by the commissioner were not contested by either party. Therefore, the issue before us is whether, given those undisputed facts, the board properly concluded that the plaintiff's injury did not arise out of his employment. As a general matter, "we have treated this issue [namely, whether the injury arose out of the employment] as factual in nature and, therefore, have accorded the commissioner's conclusion the same deference as that given to similar conclusions of a trial judge or jury on the issue of proximate cause. A finding of a fact of this character . . . is the finding of a primary fact. . . . This ordinarily . . . presents a question for the determination of the commissioner . . . ." (Internal quotation marks omitted.) *Fair* v. *People's Savings Bank*, 207 Conn. 535, 541, 542 A.2d 1118 (1988); accord *Daubert* v. *Naugatuck*, 267 Conn. 583, 590, 840 A.2d 1152 (2004). Despite this highly deferential standard, however, "[t]he conclusions drawn by [the commissioner] from the facts found [will not] stand [if] they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them." (Internal quotation marks omitted.) *Labadie* v. *Norwalk Rehabilitation Services, Inc.*, 274 Conn. 219, 227, 875 A.2d 485 (2005). Because in the present case the underlying facts are undisputed, and because both the commissioner and the board predicated their ultimate conclusions solely on the fact that the plaintiff's original fall was from a cause unrelated to the plaintiff's employment, the latter standard applies to this case. Thus, we review the board's decision on a de novo basis.[3]

In determining whether the commissioner properly applied the law to the subordinate facts, we begin with the following general principles. "It is an axiom of [workers'] compensation law that awards are determined by a two-part test. The [claimant] has the burden of proving that the injury claimed [1] arose out of the employment and [2] occurred in the course of the employment. . . . The two part test is based on General Statutes § 31-275[4]. . . .

"An injury is said to arise out of the employment

when (a) it occurs in the course of the employment and (b) is the result of a risk involved in the employment or incident to it or to the conditions under which it is required to be performed. . . . There must be a conjunction of [these] two requirements [of the test] . . . to permit compensation. . . . The former requirement [of arising out of the employment] relates to the origin and cause of the accident, while the latter requirement [of occurring in the course of employment] relates to the time, place and [circumstance] of the accident." (Citations omitted; internal quotation marks omitted.) Id., 227–28.

"An injury which occurs in the course of the employment will ordinarily [also] arise out of the employment; but not necessarily so, for the injury might occur out of an act or omission for the exclusive benefit of the employee, or of another than the master, while the employee is engaged in the course of his employment. . . . Speaking generally, an injury arises out of an employment when it occurs in the course of the employment and as a proximate cause of it. [Therefore] [a]n injury which is a natural and necessary incident or consequence of the employment, though not foreseen or expected, arises out of it. . . . An injury of this description is one of the risks of the employment, for it is due to it and arises from it, either directly, or as incident to it, or to the conditions and exposure surrounding it. And the proximate cause of the injury is not necessarily that which immediately arises out of the employment, but may be that which is reasonably incidental to it." (Internal quotation marks omitted.) Id., 237–38.

In applying these general principles, we are mindful that the act "indisputably is a remedial statute that should be construed generously to accomplish its purpose." (Internal quotation marks omitted.) *Mello* v. *Big Y Foods, Inc.*, 265 Conn. 21, 25, 826 A.2d 1117 (2003). "The humanitarian and remedial purposes of the act counsel against an overly narrow construction that unduly limits eligibility for workers' compensation." (Internal quotation marks omitted.) *Gartrell* v. *Dept. of Correction*, 259 Conn. 29, 41–42, 787 A.2d 541 (2002).

Turning to the present case, it is evident that the commissioner and the board began with a single proposition from which all other conclusions inexorably followed, namely, that, if the plaintiff's seizure was a noncompensable injury, any injuries causally connected thereto similarly must be noncompensable. This essential proposition, however, cannot be sustained.

"It long has been a fundamental tenet of workers' compensation law . . . that an employer takes the employee in the state of health in which it finds the employee." (Internal quotation marks omitted.) Id., 40. Thus, "an injury received in the course of the employment does not cease to be one arising out of the employ-

ment merely because some infirmity due to disease has originally set in action the final and proximate cause of the injury. The employer of labor takes his workman as he finds him and compensation does not depend upon his freedom from liability to injury through a constitutional weakness or latent tendency. Whatever predisposing physical condition may exist, if the employment is the immediate occasion of the injury, it arises out of the employment because it develops within it." (Internal quotation marks omitted.) *Savage* v. *St. Aeden's Church*, 122 Conn. 343, 346–47, 189 A. 599 (1937); accord *McDonough* v. *Connecticut Bank & Trust Co.*, 204 Conn. 104, 112–13, 527 A.2d 664 (1987); *Gonier* v. *Chase Cos., Inc.*, 97 Conn. 46, 50–51, 115 A. 677 (1921).

Compensability also may not be denied simply because the plaintiff could have been exposed to a similar risk of injury from the administration of aid had he suffered the seizure outside of work. "[A]n injury may arise out of an employment although the risk of injury from that employment is no different in degree or kind [from that] to which [the employee] may be exposed outside of his employment. The injury is compensable, not because of the extent or particular character of the hazard, but because it exists as one of the conditions of the employment." (Internal quotation marks omitted.) *Triano* v. *United States Rubber Co.*, 144 Conn. 393, 397, 132 A.2d 570 (1957).

It is axiomatic, however, that "[t]he conditions of employment are not confined to those which the employer creates. . . . In determining whether the injury does result from the conditions of the employment, the normal reactions of men to those conditions are to be considered. . . . [Thus] the right of an employee to recover compensation is not nullified by the fact that his injury is augmented by natural human reactions to the danger or injury threatened or done. . . . The question is whether taking all the facts into consideration the conditions of the employment are the legal cause of the injury." (Citations omitted; internal quotation marks omitted.) *Stulginski* v. *Waterbury Rolling Mills Co.*, 124 Conn. 355, 360–61, 199 A. 653 (1938). In assessing such natural human reactions, we have stated that, "[w]henever an employer puts his employees at work with fellow servants, the conditions actually existing—apart from the possibility of wilful assaults by a fellow servant independent of the employment—which result in injury to a fellow employee, are a basis for compensation under the implied contract of th[e] [a]ct." *Anderson* v. *Security Building Co.*, 100 Conn. 373, 377, 123 A. 843 (1924).

It seriously cannot be questioned that a risk exists in the workplace that an employee might fall stricken to the ground, thereby prompting the natural, foreseeable reaction of coworkers to render aid. With respect to

the employer's liability for injuries arising from such actions, in his treatise, Professor Arthur Larson sets forth the general proposition that, "the scope of an employee's employment is impliedly extended in an emergency to include the performance of any act designed to save life or property in which the employer has an interest." 2 A. Larson & L. Larson, Workers' Compensation Law (2006) § 28.01 [1], p. 28-2. "The most common type of rescue case is the rescue of coemployees, and compensation is clearly payable for injuries so sustained, on the theory that the employer has a duty to aid its own employees in peril and that any employee is impliedly authorized to discharge this duty in an emergency." Id., p. 28-4. Courts have recognized under similar statutory schemes that, "[a] reasonable rescue attempt . . . may be one of the risks of employment, an incident of the service, foreseeable, if not foreseen, and so covered by the statute." (Internal quotation marks omitted.) *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, 340 U.S. 504, 507, 71 S. Ct. 470, 95 L. Ed. 483 (1951).[5]

Under these principles, it is clear that, had the plaintiff's coworkers themselves *sustained* injuries while tending to the plaintiff, their injuries would have been compensable. It would be anomalous, therefore, to conclude that injuries that these same coworkers, while acting in the course of their employment, *inflicted* on the plaintiff in attempting to prevent him from injuring himself and other workers would *not* be compensable. In other words, whether the rescue attempt at issue is characterized as a risk of, or a condition incident to, employment for those engaged in the conduct, the essential character of the act does not change when viewed from the perspective of the coworker injured by that same conduct. Cf. *Mascika* v. *Connecticut Tool & Engineering Co.*, 109 Conn. 473, 481, 147 A. 11 (1929) (Explaining, in a case in which the plaintiff, while on his way into work, was struck by a stick thrown by his coworkers who were engaging in horseplay: "So far as the plaintiff was concerned the legal situation was the same as if he had been struck while actually engaged in the operation of his press. The risk of being injured by reason of the skylarking of his fellow employees while he himself was a passive actor was one of the risks of his employment, being incident to the conditions under which his work was performed."). Indeed, this uniform treatment of the conduct and injuries arising therefrom is compelled in the present case, given that the commissioner found that the plaintiff's coworkers had acted to prevent injury both to the plaintiff, "*as well as others* . . . ."[6] (Emphasis added.)

We have recognized that, "[i]f the act is one for the benefit of the employer or for the mutual benefit of both an injury arising out of it will usually be compensable; on the other hand, if the act being performed is for the exclusive benefit of the employee so that it is

a personal privilege or is one which the employer permits the employee to undertake for the benefit of some other person or for some cause apart from his own interests, an injury arising out of it will not be compensable." *Smith* v. *Seamless Rubber Co.*, 111 Conn. 365, 368–69, 150 A. 110 (1930).[7] Thus, when the action giving rise to injury provides some benefit to the employer, the claimant need not prove the employer acquiesced to the action in order to establish compensability.[8] See *McNamara* v. *Hamden*, 176 Conn. 547, 553–54, 398 A.2d 1161 (1979) (concluding that meaning of activity deemed "incidental to" employment and hence compensable is not limited to "compulsion by or benefit to the employer" but also includes "customary activity sanctioned by the employer through approval or acquiescence" [internal quotation marks omitted]). Such acquiescence, or constructive knowledge, is implicit by virtue of the benefit. See *Kish* v. *Nursing & Home Care, Inc.*, 248 Conn. 379, 389–90 n.14, 727 A.2d 1253 (1999) (noting that, under our case law, constructive knowledge may be imputed as matter of law).

In light of the commissioner's finding that the plaintiff's coworkers had rendered aid to prevent injury not only to the plaintiff, but also to other workers, the *only* reasonable inference from this fact is that, contrary to the board's conclusion, the coworkers' actions were undertaken to benefit both the plaintiff *and* the defendant. Given this mutual benefit, the injuries sustained as a result thereof must fall within the scope of the general rule that an injury sustained in the course of employment also arises out of the employment.[9] See *Labadie* v. *Norwalk Rehabilitation Services, Inc.*, supra, 274 Conn. 237 ("[a]n injury which occurs in the course of the employment will ordinarily [also] arise out of the employment; but not necessarily so, for the injury might occur out of an act or omission for the exclusive benefit of the employee, or of another than the master, while the employee is engaged in the course of his employment" [internal quotation marks omitted]); see also *Ryerson* v. *A. E. Bounty Co.*, 107 Conn. 370, 379, 140 A. 728 (1928) (plaintiff's action for his own safety, although ultimately causing injury, "was as important an act for the employer as for the employee, so that the master's work could be done" and thus gave rise to compensable injury).

Indeed, although it is not a prerequisite to compensability that the risk of injury be greater to the employee than to a member of the public; *Triano* v. *United States Rubber Co.*, supra, 144 Conn. 397; it cannot be questioned that the plaintiff was more likely to be physically restrained by his coworkers than by strangers had he suffered the seizure in some neutral, public forum. The incentive to act in the employer's interest, the community of purpose among coworkers and the relationships engendered by that purpose would make intervention, and hence injury therefrom, more likely.

This discussion demonstrates that the board's reliance on our decision in *Porter* v. *New Haven*, supra, 105 Conn. 394, was misplaced. In *Porter*, a visitor to the claimant's workplace pushed the claimant, causing him to fall to the floor and sustain serious injury. Id., 395. The court emphasized that the actor in that case was not a coworker; id., 397; and it is self-evident that such an action could not be characterized as one benefiting the employer, or the employee for that matter.

The defendant contends, however, that public policy counsels against the compensability of the injury in the present case because such a result would have a chilling effect on coworkers and employers rendering aid to a stricken employee. We disagree that such a consequence is likely. Employers have a vested interest in the welfare of their employees and an even greater interest in preventing and minimizing compensable injuries. Employees witnessing a coworker in distress generally will not know whether the distress results from, or will lead to, a compensable or noncompensable injury. Moreover, it seems doubtful that an employer would risk possible liability for an employee's injuries that were sustained as a result of the employer's categorical bar on direct aid to an injured employee. Therefore, we conclude that the defendant's public policy argument is unpersuasive.

The decision of the board is reversed and the case is remanded to the board with direction to sustain the plaintiff's appeal.

In this opinion NORCOTT, KATZ, PALMER and VERTEFEUILLE, Js., concurred.

* The listing of justices reflects their seniority status on this court at the time of oral argument.

This case originally was argued before a panel of this court consisting of Chief Justice Sullivan and Justices Borden, Norcott, Katz and Zarella. Thereafter, the court, pursuant to Practice Book § 70-7 (b), sua sponte, ordered that the case be considered en banc. Accordingly, Justices Palmer and Vertefeuille were added to the panel, and they have read the record, briefs and transcript of the oral argument.

[1] The plaintiff appealed from the board's decision to the Appellate Court pursuant to General Statutes § 31-301b. We then transferred the appeal to this court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1.

[2] Wausau Insurance Company, the workers' compensation liability insurer for Platt Brothers and Company, also is a defendant in this action. For purposes of clarity, we refer to Platt Brothers and Company as the defendant.

[3] The dissent incorrectly criticizes our application of de novo review in the present case. We do not question, however, the commissioner's findings of fact or inferences drawn therefrom, which, under the standard in *Fair*, would require application of a highly deferential standard of review. Rather, we address a question of law, which this court previously has not addressed, namely, whether an injury is compensable under the act when sustained as a result of coworkers rendering aid to prevent harm to other coworkers and the worker in distress. As we explain later in this opinion, the commissioner and the board proceeded from the erroneous legal premise that the plaintiff's idiopathic condition, which triggered the coworkers' response, was dispositive as to the question of whether the subsequent actions of the coworkers resulted in an injury that "arose out of the employment." We do not read *Fair* as requiring that we treat such questions as factual in nature.

[4] General Statutes § 31-275 provides in relevant part: "As used in this chapter, unless the context otherwise provides: (1) 'Arising out of and in the course of his employment' means an accidental injury happening to an

employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer, provided . . .

"(B) A personal injury shall not be deemed to arise out of the employment unless causally traceable to the employment other than through weakened resistance or lowered vitality . . .

"(E) A personal injury shall not be deemed to arise out of the employment if the injury is sustained: (i) At the employee's place of abode, and (ii) while the employee is engaged in a preliminary act or acts in preparation for work unless such act or acts are undertaken at the express direction or request of the employer . . . ."

[5] In *O'Leary*, the court emphasized that the commissioner's conclusions that the claimant had acted reasonably in attempting the rescue and that his death fairly may be attributable to the risks of the employment were based on permissible, but not compelled, inferences from the evidence. *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, supra, 340 U.S. 508. The rescue at issue in that case, however, was of a third person not employed by the defendant employer. Our survey of the case law in which an employee came to the aid of a coworker does not reveal any case in which a court concluded that the rescue was not a foreseeable risk or condition of the employment. To the extent that *O'Leary* suggests that the reasonableness of the rescue effort is a prerequisite to compensability, we note that, in the present case, the reasonableness of the efforts of the plaintiff's coworkers is not at issue.

[6] The dissent recognizes that there "may be cases where the provision of aid increases the risk of injury," and suggests that, consistent with case law from some other jurisdictions, such an injury could "arise out of the employment" if the aid were rendered negligently. Our statutory scheme, however, eschews any proof of fault or degree of culpability as a prerequisite for compensation. *Bergeson* v. *New London*, 269 Conn. 763, 768, 850 A.2d 184 (2004) ("[a]ct was enacted to provide compensation for any injury arising out of and in the course of employment, without regard to fault, by imposing a form of strict liability on the employer" [internal quotation marks omitted]). Thus, we disagree that the degree or presence of culpable conduct determines whether that conduct is a condition of employment.

[7] *Smith* v. *Seamless Rubber Co.*, supra, 111 Conn. 368–69, is instructive in that this court suggested therein that, when there is evidence of a mutual benefit from an employer's action in tendering medical aid to an employee, injury resulting from such aid would be compensable. In that case, the court affirmed the commissioner's decision that the plaintiff's infection resulting from a smallpox vaccination administered at his workplace did not arise from the plaintiff's employment. Id., 367. The court reasoned that, "if the act being performed is for the exclusive benefit of the employee so that it is a personal privilege or is one which the employer permits the employee to undertake for the benefit of some other person or for some cause apart from his own interests, an injury arising out of it will not be compensable." Id., 369. The court emphasized, however, that the record indicated that the sole purpose of the vaccination program was to serve "the general good of the community"; id., 370; and "nothing upon the record indicates the extent of the danger of an epidemic or how far it would be likely to affect working conditions in the company's factory." Id., 369. Thus, the court could not "assume as a necessary inference from the situation disclosed by the record that the opportunity given to the employees of the company to secure vaccination was extended to them for its benefit rather than as a personal privilege, or a means of serving the general good of the community. Lacking this fact the conclusions of the commissioner cannot be held to be violative of any rule of law, or unreasonable or illogical." Id., 369–70. In the present case, however, the necessary inference from the commissioner's finding that the plaintiff's coworkers intervened "in an attempt to prevent the [plaintiff] from injuring himself, as well as others" is that a mutual benefit inured to both the employer and employee.

[8] The plaintiff contends that the defendant acquiesced in or sanctioned his coworkers' actions, ostensibly in reliance on his assertion that Grenick, "who also acted as the factory paramedic," had tendered the aid. Although, at the hearing before the commissioner, the defendant had conceded that Grenick was an emergency medical technician and Noel had testified that, "if anyone gets hurt at the company they usually go see [Grenick]," the commissioner only found as to this issue that "Noel referred to [Grenick] as a paramedic . . . ." The plaintiff did not seek to correct that finding.

Therefore, we are limited to the record before us and do not consider Grenick's status as it otherwise might bear on compensability.

[9] To the extent that the dissent relies on Professor Larsen's framework designating risks as "neutral" or "personal" to assess compensability; see 1 A. Larson & L. Larson, supra, § 4.03, pp. 4-2 through 4-3; we note that this court has not heretofore adopted this framework, and we decline to do so in the present case.