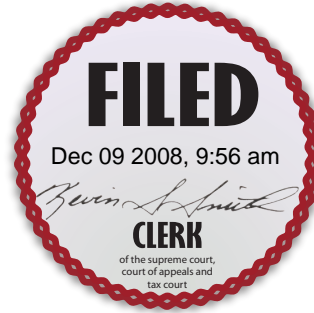


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

PARKE COUNTY RESIDENTIAL)
CARE CENTER,)
)
Appellant,)
)
vs.)
)
SARAH A. NORMAN,)
)
Appellee.)

No. 93A02-0807-EX-618

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Application No. C-164604

December 9, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Parke County Residential Care Center (“Parke”) appeals the full Indiana Worker’s Compensation Board’s (the “Board”) conclusion that Sarah Norman’s injury arose out of her employment.

We affirm.

ISSUE

Whether the Board’s decision is contrary to law.

FACTS

On August 31, 2002, Norman was employed by Parke as a licensed practical nurse. As she turned to dispose of a medicine cup, she fell. Norman sustained a broken hip, for which she underwent surgery on September 1, 2002.

On February 14, 2003, Norman filed an application for adjustment of claim with the Board. A single hearing member heard the matter on September 27, 2004. The parties entered their stipulations and issues as follows:

1. [Norman] was an employee of [Parke] on August 31, 2002.
2. On said date, [Norman] was injured in the course of her employment.
3. As a result of the fall, [Norman] broke her left hip.

The sole issue for determination by the [Board] at this bifurcated hearing is whether [Norman]’s injury arose out of her employment with [Parke].

(App. 5).

During the hearing, evidence was presented that in July of 2002, Norman went to Dr. J. Frank Swaim, complaining of pain in her back, left hip and down her left leg. She “could hardly walk because of the pain.” (Tr. 11). At times, she could only lift her left leg with her hands because “rais[ing] it up . . . caused really bad pain.” *Id.* Norman reported that the pain began after she had helped her husband with his roofing business. Dr. Swaim diagnosed her with sciatica, which is “a symptom of a problem with the sciatic nerve, a large nerve that runs from the lower back down the back of each leg.” <http://www.nlm.nih.gov/medlineplus/sciatica.html> (last visited Nov. 19, 2008). He referred Norman for an MRI, which found “severe degenerative disc disease,” marginal arthritis, and “a broad central disc protrusion” (App. 50). Norman also sought treatment for her back pain from a chiropractor throughout the month of August of 2002. She reported to her chiropractor that she had been unable to bear weight on her left leg for several days and was in severe pain. Norman took one week off from work due to the pain in August. She last received treatment from her chiropractor on August 30, 2002.

During the hearing, Norman testified that she had had difficulty walking and had been unable to bear weight on her left leg due to her sciatica. She further testified that prior to August 31, 2002, she had never fallen as a result of her condition. She also testified that her sciatica “wasn’t bothering [her]” on August 31, 2002. (Tr. 17). As to the events of August 31, 2002, Norman stated that after turning to dispose of a leaking medicine cup, she “took a step back to where [she] was, and as [she] did, [her] “left leg went straight out from under [her] like when you do when you slip on ice.” (Tr. 23).

On February 23, 2005, the single hearing member entered its findings of fact and conclusions of law, finding as follows:

1. On August 31, 2002, [Norman] was performing her regular duties on behalf of [Parke] when she fell.
2. Although the parties actively dispute the mechanism causing [Norman] to fall, they do not dispute that the impact after the fall caused [Norman] to break her left hip.
3. Based largely on the initial reports of medical providers, including ambulance technicians, emergency room evaluators, and hospital consulting physicians, the Single Hearing Member concludes that there is actually little question as to the mechanism of the fall. Each of the indicated medical providers described an event wherein [Norman] twisted to the left, suffered immediate pain and an inability to bear weight.
4. [Parke] contends that the inability to bear weight results solely from a pre-existing sciatica condition. There is no medical evidence in the record to support this contention. Instead, it appears most likely, that [Norman]'s work duties of twisting and turning aggravated her sciatica condition. More specifically, her twist to the left, which was occasioned by the need to throw away a leaking medicine cup, directly resulted in her onset of pain and inability to bear weight.
5. There is no dispute that the twisting [Norman] was doing caused her low back pain and inability to bear weight were work-required activities.
6. So that the record is clear, the Single Hearing Member finds that [Norman] did not fall because she slipped on any substance on the floor nor did she fall because she tripped on any object.

(App. 6). The single hearing member accordingly concluded that Norman “sustained personal injury by accident arising out of and in the course of her employment with [Parke] when, in furtherance of her duties on behalf of [Parke], she fell and broke her left hip.” (App. 7).

On or about June 16, 2006, Parke filed a notice of intent to submit medical report with the Board. As such, it designated a report from Dr. John McLimore. Dr. McLimore reported that he conducted an independent medical evaluation of Norman on May 31, 2006. According to his report, Norman reported that on August 31, 2002, as she was pouring medicine, “[s]he turned to the left and when she turned, the [left] leg gave out and she fell to the floor on her left side.” (App. 69). She also reported her “chronic history of low back pain that radiated down the left leg that was diagnosed as sciatica.” *Id.* In response to Parke’s questions “regarding whether Mrs. Norman’s preexisting sciatic condition caused her left leg to give out, which in turn led her to fall and fracture her left hip,” Dr. McLimore opined that Norman’s “significant ongoing symptoms related to [sciatica] . . . likely contributed to the fall given her altered gait mechanics and level of pain she was experiencing.” (App. 72). He concluded that “certainly her preexisting back condition and left lower extremity pain and sciatica symptoms quite probably did play a predisposing factor contributing to her fall in light of the above assessment and review of the medical records, as well as reviewing the mechanism and mechanics of the injury with the patient.” *Id.* Regarding whether Norman’s hip fractured due to her fall or “following her twisting motion before she struck the ground,” Dr. McLimore opined that “more probably than not [he] would suspect that the impact with the ground causally was associated with the left hip fracture when she landed on her left side.” (App. 72, 73).

On September 28, 2006, Parke designated a second report from Dr. McLimore to be used as evidence. That report, dated September 19, 2006, sought to clarify “whether

Ms. Norman's preexisting lumbago/sciatica symptoms probably or more likely than not caused her to fall at work and fracture her left hip on August 31, 2002.'" (App. 75). He clarified as follows:

Given a detailed review of the medical record, her preexisting pathology, subjective lumbago, left lower extremity symptomatology, altered gait mechanics, and ongoing sciatica symptoms, I feel that her preexisting status and condition more likely than not caused her to fall at work and fracture her left hip on August 31, 2002. Granted the fracture resulted when she impacted the ground, but the predisposing factors of her preexisting lumbago and left lower extremity sciatica symptoms with altered gait mechanics probably or more likely than not caused her fall at work and subsequent fracture of her left hip August 31, 2002. It is noted that she first twisted, and this likely contributed to exacerbation of her underlying/preexisting lumbago and sciatica symptoms, and subsequently "the leg gave out" and again more likely than not was the causal factor leading to the fall at work

(App. 75-76).

On October 2, 2006, the single hearing member held a hearing on the issue of Norman's award entitlement. Parke tendered the deposition of Dr. John Diana, an orthopedic surgeon who treated Norman's hip after her fall. He testified that, based on Norman's medical history, "one could certainly say that there was an injury . . . in the left side which certainly would put one at risk for any type of accident." (Tr. 332). He, however, further testified as follows:

Q When she turned at work and fell, was that due to her preexisting left sciatica condition?

A I guess my response is no. If you want an absolute—

Q I'm not asking for absolute.

A Then the answer's no.

Q I'm asking, can you state with a reasonable degree of medical certainty that when she turned at work and her left leg gave out and she fell, was the cause of her fall her sciatica condition?

A I would just say, I just think it's—I think that it's a contributing factor. That's all I can say. . . . [A]nybody with an injury is going to be at risk for a reinjury, if they're doing something on that particular injured extremity.

* * *

Q Doctor, in your professional opinion, with a reasonable degree of medical certainty, what do you believe caused her left leg to give out and caused her to fall?

* * *

[A] I think that she had pain when she twisted, and I think she fell and broke her hip. And I think—and that's just the fact.

Q And was that due to her preexisting sciatica problem that she was treating for just the day before?

A I think it very well could be, you know, a contributing factor that she would have—I mean, obviously, there's similar symptoms, having been given the patient stated or in the prior medical records. So she could have had a similar episode and then fell at work, but then again, you know, whether that was a direct causation, I can't say that it is.

* * *

Q . . . [Y]ou said that in your opinion it was a contributing factor, her preexisting sciatica condition, correct?

A It would predispose her to—it would make her at higher risk for sustaining an injury, is the best way of putting it.

* * *

Q [W]ould you say that under that . . . her fall to the ground was due to her sciatica condition?

A I can't say that either

* * *

Q Could you state with a reasonable degree of medical probability, rather than medical certainty, that when she twisted on August 31, 2002, and her left leg gave out, when she fell to the floor, that the fall to the floor was caused by her sciatica condition?

A No.

(Tr. 333-41).

On March 13, 2007, the single hearing member issued an award in Norman's favor, ordering Parke to pay \$31,413.97 in temporary total disability benefits; \$31,750.00 as compensation for a 50% lower extremity permanent partial impairment; and statutory medical expenses and attorney fees. On April 3, 2007, Parke sought a review from the full Board. The full Board heard the matter on April 28, 2008. On June 5, 2008, the full Board entered its order, affirming the single hearing member's opinion.

Additional facts will be provided as necessary.

DECISION

The underlying purpose of the Worker's Compensation act is "to provide compensation to workers suffering from work-related injuries without meeting the liability requirements of tort law." *Milledge v. Oaks*, 784 N.E.2d 926, 933 (Ind. 2003). As worker's compensation is for the employee's benefit, the Act should be liberally construed. *Id.*

Indiana Code Section 22-3-4-8 provides that “[a]n award by the full board shall be conclusive and binding as to all questions of the fact, but either party . . . may . . . appeal to the court of appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions.” Upon appeal from a finding of the Board, this Court employs a deferential standard. We are bound by the Board’s findings of fact and may not disturb its determination unless the evidence is undisputed and leads undeniably to a contrary conclusion.

The Board is required to make findings that reveal its analysis of the evidence and are specific enough to permit intelligent review of its decision. We first review the record to determine if there is any competent evidence of probative value to support the Board’s findings, and then examine the findings to see if they are sufficient to support the decision. We will not reweigh the evidence or assess witness credibility, but will consider only the evidence most favorable to the award, together with the reasonable inferences flowing therefrom.

Greenberg News Network v. Frederick, 793 N.E.2d 311, 314-15 (Ind. Ct. App. 2003).

Parke contends that the Board’s decision is contrary to law because Norman’s injury did not arise out of her employment. Specifically, it asserts that “[t]he undisputed evidence is that [Norman’s] fall arose out of her idiopathic medical condition and, therefore, was not compensable.” Parke’s Br. at 12.

The Worker’s Compensation Act authorizes the payment of compensation to employees for “personal injury or death by accident arising out of and in the course of the employment.” An injury “arises out of” employment when a causal nexus exists between the injury sustained and the duties or services performed by the injured employee. An accident occurs “in the course of employment” when it takes place within the period of employment, at a place where the employee may reasonably be, and while the employee is fulfilling the duties of employment or while engaged in doing something incidental thereto. Both requirements must be met before compensation is awarded, and neither alone is sufficient. The person who seeks Worker’s Compensation benefits bears the burden of proving both elements.

Milledge, 784 N.E.2d at 929. Whether an employee’s injury arose out of her employment is a question of fact to be determined by the Board. *Greenberg*, 793 N.E.2d 311 at 315.

A causal nexus between the injury sustained and the duties or services performed by the injured employee “‘is established when a reasonably prudent person considers the injury to be born out of a risk incidental to the employment, or when the facts indicate a connection between the injury and the circumstances under which the employment occurs.’” *Id.* (quoting *Wine-Settergren v. Lamey*, 716 N.E.2d 381, 389 (Ind. 1999)). “The ‘risk[s] incidental to employment’ fall into three categories: (1) risks distinctly associated with employment, (2) risks personal to the claimant, and (3) risks of neither distinctly employment nor distinctly personal in character.” *Id.* at 930. “[R]isks personal to the claimant, those ‘caused by a pre-existing illness or condition unrelated to employment,’ are not compensable.” *Id.* (quoting *Kovatch v. A.M. Gen.*, 679 N.E.2d 940, 943 (Ind. Ct. App. 1997), *trans. denied*).

Here, Parke designated Dr. McLimore’s report as evidence that Norman’s risk was personal to her; namely, that her fall was caused by her pre-existing back condition. Dr. McLimore concluded that Norman’s sciatica, a pre-existing condition, “more likely than not caused her to fall at work and fracture her hip . . . ” and that her turning or twisting motion “likely contributed to the exacerbation of her . . . sciatica symptoms” (App. 75-76).

Dr. Diana, however, testified that he could not say with a reasonable degree of medical probability that Norman’s pre-existing condition caused her to fall. Although he

believed it “could be . . . a contributing factor,” he could not say that it was “a direct causation.” (Tr. 336).

Contrary to Parke’s assertion, we cannot say that evidence regarding whether Norman’s sciatica caused her to fall was undisputed, where the experts presented conflicting opinions. Thus, we are bound by the Board’s findings, and we will not reweigh the evidence or assess witness credibility. *See Shultz Timber v. Morrison*, 751 N.E.2d 834, 837 (Ind. Ct. App. 2001) (“[W]e must leave to the Board the task of resolving the conflicts in expert testimony as part of its larger duties of weighing the evidence and judging witness credibility.”), *trans. denied*. Considering only the evidence most favorable to award, we find that the Board’s findings are supported by probative evidence, and the findings support the Board’s conclusion that Norman’s injury arose out of her employment with Parke. Thus, we may not disturb the Board’s conclusion.

Affirmed.

RILEY, J., and VAIDIK, J., concur.