IN THE COURT OF APPEALS OF IOWA

No. 3-082 / 12-1519
Filed May 15, 2013

AARP and ARCH INSURANCE CO.,
Petitioners-Appellees,

vs.

DONALD WHITACRE,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel, Judge.

A workers' compensation claimant contends that the district court erred in reversing an agency decision awarding him benefits. **REVERSED AND REMANDED.**

Phillip Vonderhaar, West Des Moines, for appellant.

Timothy W. Wegman and Joseph M. Barron of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, L.L.P., West Des Moines, for appellees.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

VAITHESWARAN, P.J.

Donald Whitacre appeals the district court's reversal of a workers' compensation decision in his favor. He argues the district court erred in concluding his injury did not arise out of his employment.

I. Background Facts and Proceedings

Seventy-nine-year-old Whitacre worked part-time as a janitor for the American Association of Retired Persons (AARP). One day, while on a coffee break with his supervisor, Pat Faught, Whitacre began to choke. He stood up to get a drink of water and, as he did so, stumbled and hit the corner of Faught's desk and the corner of the office wall. He landed head first on the floor.

Whitacre sustained injuries to his head and face. He underwent surgery to remove a blood clot in his brain and continued to suffer adverse health consequences.

Whitacre petitioned for workers' compensation benefits. Following an evidentiary hearing, a deputy commissioner concluded Whitacre's injury arose out of his employment. The deputy awarded him medical expenses and weekly compensation benefits. The deputy's decision was affirmed on intra-agency appeal.

AARP and its insurer, Arch Insurance Company, sought judicial review. The district court ruled that the agency erred in concluding Whitacre's injury arose out of his work with AARP. This appeal followed.

II. Standards of Review

Whether an injury arose out of employment is "'a mixed question of law and fact.'" *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007) (citation

omitted). The factual aspect "requires the Commissioner to determine 'the operative events that gave rise to the injury.'" *Id.* (citation omitted). The legal aspect is "'whether the facts, as determined, support a conclusion that . . . [the] injury arose out of the employment.'" *Id.* (quotation marks and citation omitted).

The facts are essentially undisputed. Both sides focus on whether those facts support a legal conclusion that the injury arose out of Whitacre's employment. This argument implicates the standards of review set forth in Iowa Code section 17A.19(10)(c), (m) (2011), which states:

> The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:
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> . . . .
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> (c) Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
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> . . . .
>
> (m) Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

See also Lakeside Casino, 743 N.W.2d at 173.

III. Analysis

The "arising out of" test "requires proof 'that a causal connection exists between the conditions of [the] employment and the injury.'" *Lakeside Casino*, 743 N.W.2d at 174 (quoting *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996)). "Generally injuries resulting from risks personal to the claimant are not compensable." *Koehler Elec. v. Wills*, 608 N.W.2d 1, 4 (Iowa 2000). Exceptions have been recognized where "the employment contributes to the risk or aggravates the injury." *Id.* (internal quotation marks and citation omitted).

Generally, "we have abandoned any requirement that the employment subject the employee to a risk or hazard that is greater than that faced by the general public." *Lakeside Casino,* 743 N.W.2d at 174–75.

The parties agree Whitacre's fall was caused by a personal condition. In workers' compensation parlance, the accident was an "idiopathic fall." *See id.* The fighting issue is whether the conditions of Whitacre's employment aggravated the injury.

On this question, the commissioner adopted the deputy commissioner's determination that "the design and construction of the office where claimant passed out significantly contributed to claimant's injury." The deputy noted that Whitacre "choked and passed out in a small office with hard, concrete walls and a hard floor." The deputy continued,

> Hitting his head against such a hard, unyielding surface resulted in a great deal of damage to his head and brain. Thus, although work conditions did not cause him to black out and fall, work conditions in the form of the concrete wall definitely worsened the effects of the fall.

Relying on *Koehler* and an unpublished opinion of this court, *Benco Manufacturing v*. *Albertsen*, No. 08-0746, 2009 WL 249647 (Iowa Ct. App. Feb. 4, 2009), the commissioner concluded Whitacre's injury arose out of his employment.

In *Koehler*, the Iowa Supreme Court concluded that a worker who fell from a ladder to a concrete floor four to five feet beneath him sustained injuries arising out of his employment. 608 N.W.2d at 5. In *Albertson*, this court concluded that a worker who fell backwards into a cement wall screening a restroom sustained injuries arising out of her employment. 2009 WL 249647, at *4. In both cases,

the courts concluded that the conditions of employment aggravated the injury resulting from the fall.

AARP contends the commissioner's analysis was flawed in that "[t]here was no dangerous condition created by the Employer." While this assertion is appealing at first blush, *Koehler* did not require the existence of a "dangerous condition." 608 N.W.2d at 4. It simply required that an employee be "placed in a position that aggravates the effects of an idiopathic fall." *Id.*

We recognize that, in an earlier opinion, *Miedema*, the court made reference to dangerous conditions, stating, "[T]here were no dangerous conditions created by Miedema's employer." 551 N.W.2d at 312. But, in its later opinion, *Lakeside Casino*, the court clarified that the focus is on whether "'the nature of the employment exposes the employee to the risk of such an injury.'" 743 N.W.2d at 174 (quoting *Hanson v. Reichelt*, 452 N.W.2d 164, 168 (Iowa 1990)). The court specifically disavowed *Miedema* to the extent that opinion focused on increased risk. *Id.* at 175 n.3. We believe *Miedema's* reference to "dangerous conditions created by Miedema's employer" was an inadvertent throw-back to the increased-risk doctrine.[1]

That said, we acknowledge the distinction between a dangerous employment condition that increases the risk of injury and an employment condition that aggravates the effects of an idiopathic fall is a fine one. *See*

[1] While criticizing the "increased risk" language used in *Miedema*, *Lakeside Casino* did not disavow language in *Koehler* stating the claimant had to prove "that a condition of his employment increased the risk of injury." *Koehler*, 608 N.W.2d at 5. We presume this reference to increased risk in *Koehler* was inadvertent, in light of the court's pronouncement earlier in the opinion that the focus was on whether the employment aggravated the injury. *Id.* at 4.

Larson's Workers' Compensation Law § 9.01[1] (2007). The key is that, with idiopathic falls, which "begin with an origin which is admittedly personal," there must be "some affirmative employment contribution to offset the prima facie showing of personal origin." *Id.* The requirement of "some employment contribution to the risk in idiopathic-fall injuries is a quite different matter from the requirement of increased risk" in cases involving a neutral origin, such as lightning. *Id.* at 9.01[4][b]. [T]he relative contributions of employment and personal causes are not weighted; the employment factor need not be the greater, but it must be real, not fictitious." *Id.*

Returning to the essentially-undisputed facts of this case, the deputy found the fall took place in a "small office." The deputy further found Whitacre first hit the corner of the desk, then hit the wall, and then fell to the floor. No expert was required to conclude that these office conditions aggravated the effects of Whitacre's idiopathic fall. *See Koehler*, 608 N.W.2d at 5.

We conclude the commissioner did not err in concluding Whitacre's injury arose out of his employment, and we further conclude the commissioner's application of law to fact was not irrational, illogical, or wholly unjustifiable. Accordingly, we reverse the district court's decision on judicial review and remand for entry of judgment affirming the commissioner's decision.

REVERSED AND REMANDED.