IN THE COURT OF APPEALS OF IOWA

No. 9-541 / 08-1688
Filed September 17, 2009

MERCY MEDICAL CENTER,
Petitioner-Appellant,

vs.

PATRICIA A. PLUMB,
Respondent-Appellee.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, Judge.

An employer appeals the district court's affirmance of a workers' compensation award, contending that the claimant's injury did not arise out of her employment; it also contests the award of healing period benefits. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Lee Hook and Joseph Barron of Peddicord, Wharton, Spencer, Hook, Barron & Wegman, LLP, Des Moines, for appellant.

Steven Jayne, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

VAITHESWARAN, P.J.

An employer appeals the district court's affirmance of a workers' compensation award. The primary issue is whether the claimant's injury "arose out of" her employment.

I. Background Facts and Proceedings

Patricia Plumb, a staff nurse at the emergency room of Mercy Medical Center, tripped and fell backwards on her wrist as she walked toward the nurse's station to obtain some information about a patient. Plumb fractured her left arm and later experienced problems with her shoulder.

Plumb filed a petition for workers' compensation benefits. A deputy workers' compensation commissioner concluded that her injury "arose out of" her employment. He stated,

> Claimant either tripped or slipped while walking backwards at a nurse's work station for an unexplained reason. While claimant's fall is unexplained, it is not an idiopathic fall. Claimant has proven she sustained an injury that arose out of and in the course of her employment.

After analyzing the remaining elements, the deputy awarded Plumb permanent partial disability benefits and, on rehearing, healing period benefits.

Mercy filed an intra-agency appeal. Like the deputy, the commissioner concluded that the "arising out of" requirement was satisfied. He stated:

> I agree with the hearing deputy that claimant's fall was not idiopathic as there was no showing by the defendant that the fall was due to a personal condition or weakness. It was an unexplained fall while performing her duties in the course of employment and therefore compensable.

The commissioner continued,

> An unexplained fall is still a neutral risk and compensable if it is done while performing a job task. There was no showing that the fall was idiopathic or attributable to a personal weakness. There was no showing that her activity when the fall occurred was not within the scope of her employment. While the employment connection may not be strong, the employment has more of a connection to the fall than any other reason for the fall.

The commissioner increased the duration of the award of permanent partial disability benefits and affirmed the award of healing period benefits.

Mercy sought judicial review. On the "arising out of" question, the district court concluded that a recent supreme court decision had cast doubt upon the commissioner's legal analysis. Nonetheless, the court affirmed the commissioner's conclusion that Plumb's injury arose out of her employment. The court reasoned that Plumb's fall was not "unexplained," as the commissioner found:

> [I]n walking backwards on a flat surface, one must lift each foot and move it backward while maintaining balance on the other. Further, each foot must be lifted and moved backward at a height and in a trajectory that does not cause it to encounter resistance from another object such as one's other foot or leg or the floor itself, thereby causing a loss of balance and a fall. Likewise, walking backwards without "slipping" when there is no slippery substance on the floor requires placing each backward moving foot firmly on the surface at the end of the movement and shifting weight to that foot so as to maintain balance as the other foot is lifted. It is obvious that Patricia's movements in some way fell short of these requirements. Therefore, . . . Patricia's fall was not "unexplained."

The court determined that Plumb's "fall was caused by the fact that she stumbled on the floor," and "the floor on which Patricia was walking when she fell was a condition existing in her work place." In the court's view, "[h]er misstep was obviously 'causally related' to the fact that she was walking backwards on a floor."

The court also affirmed the award of healing period benefits. This appeal followed.

II. “Arising Out of” Employment

Mercy contends that “the district court erred as a matter of law in finding claimant met her burden of proof that she sustained an injury arising out of her employment.” This element, contained in the workers’ compensation statute, “requires proof ‘that a causal connection exists between the conditions of [the] employment and the injury.’” *Lakeside Casino v. Blue*, 743 N.W.2d 169, 174 (Iowa 2007) (quoting *Miedema v. Dial Corp.*, 551 N.W.2d 309, 311 (Iowa 1996)); *See* Iowa Code § 85.3(1) (2007).

Courts have taken various approaches to interpreting this causation requirement. *See* 1 Arthur Larson & Lex K. Larson, *Larson’s Workers’ Compensation Law* §§ 3.01–.06, at 3-1 to 3-6.5 (2009) [hereinafter Larson]. Among the approaches are two that have been labeled the “positional risk” doctrine and the “actual risk” doctrine. *Id.* §§ 3.04–.05, at 3-5 to 3-6.1. The positional-risk doctrine provides that “[a]n injury arises out of the employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where he was injured.” *Id.* § 3.05, at 3-6. The actual-risk doctrine is defined as follows:

> If the nature of the employment exposes the employee to the risk of such an injury, the employee suffers an accidental injury arising out of and during the course of the employment. And it makes no difference that the risk was common to the general public on the day of the injury.

Lakeside Casino, 743 N.W.2d at 174 (quoting *Hanson v. Reichelt*, 452 N.W.2d 164, 168 (Iowa 1990)).

The district court concluded that the commissioner applied the positional-risk doctrine. Citing *Lakeside Casino*, the court concluded this was error, as Iowa has adopted the actual-risk doctrine. *Id.* at 177 ("Iowa has not adopted the positional-risk rule, and we decline to do so now under the circumstances presented by this case."); *Hanson*, 452 N.W.2d at 168 ("We think the actual risk rule is the better rule and more in line with how we construe our Workers' Compensation Act."). The parties do not take issue with this conclusion.[1] Instead, they focus on the agency determination that the fall was "unexplained" and the district court's analysis of this determination.

The scope of our review with respect to this determination depends on how we characterize it. If it is a finding of fact, as Mercy urges, then our review is to determine whether that finding is supported by substantial evidence. Iowa Code § 17A.19(10)(f). If the determination involves application of law to fact on an issue that is clearly vested with the agency, as Plumb urges, then our review is to determine whether the application is "irrational, illogical, or wholly unjustifiable." *Id.* § 17A.19(10)(m); *Lakeside Casino*, 743 N.W.2d at 173.

In our view, both parties are correct. *See Lakeside Casino*, 743 N.W.2d at 173 (stating the "arising out of" question is "a mixed question of law and fact"). Mercy correctly states that we must review the commissioner's findings concerning the nature of the fall in order to resolve the "arising out of" conclusion. *Id.* (stating that the factual aspect "requires the commissioner to determine 'the operative events that gave rise to the injury'" (quoting *Meyer v. IBP, Inc.*, 710

---

[1] Plumb simply argues that "if this is not an actual-risk case, positional-risk should be accepted under the circumstances presented."

N.W.2d 213, 218 (Iowa 2006)). Plumb correctly states that we must also review the commissioner's application of the law to the facts. *Id.* (stating the legal aspect is "[w]hether the facts, as determined, support a conclusion that the injury arose out of . . . [the] employment" (quoting *Meyer*, 710 N.W.2d at 218)). Therefore, we will apply both standards set forth above.

We begin with the commissioner's findings concerning how Plumb fell. The commissioner adopted the deputy's findings that Plumb "tripped and fell" "on carpet" while walking "backwards or sideways" as she was "talking to another nurse." The commissioner also adopted the finding that Plumb "had no idea why she fell." On our review of the record as a whole, there is no question that these findings are supported by substantial evidence.

We turn to the commissioner's application of the law to the facts. It is in this context that the commissioner determined that Plumb's injury was "unexplained." Citing *Larson's Workers' Compensation Law*, the commissioner stated that "unexplained falls" fell into the "neutral risk category." *See* Larson, § 7.04(1)(a), at 7-28. The commissioner concluded that "[t]he positional risk theory should clearly apply in such situations" and stated, "absent a personal cause, the cost of an accidental injury suffered while in the course of employment should be borne by the employer, not the worker and his family."

As noted, the parties are in accord that the Iowa Supreme Court rejected this approach in *Lakeside Casino*, an opinion that was on file as of the date of the commissioner's ruling. Therefore, we agree with the district court that the commissioner's application of law to fact was "irrational, illogical, or wholly unjustifiable." *See* Iowa Code § 17A.19(10)(m).

The district court could have ended this part of its ruling at this juncture. Instead, the court proceeded to reexamine the facts in light of the law as set forth in *Lakeside Casino*. This would have been its prerogative had the facts been undisputed as they were in *Lakeside Casino*. 743 N.W.2d at 143 ("In the case before us, there is no dispute as to the facts."). Because there was some disagreement on the nature of Plumb's fall and how it occurred, we believe the appropriate remedy was to remand the "arising out of" question to the agency to reevaluate the facts in light of the correct law. *See Meyer*, 710 N.W.2d at 219 n.1. ("If the commissioner fails to consider relevant evidence in making a conclusion, fails to make the essential findings to support the legal conclusion, or otherwise commits an error in applying the law to facts, we remand for a new decision unless it can be made as a matter of law."); *see also Armstrong v. State of Iowa Bldgs. & Grounds*, 382 N.W.2d 161, 165 (Iowa 1986). Accordingly, we reverse and remand on this issue.

III. Healing Period

The commissioner agreed with the deputy commissioner's ultimate conclusion that Plumb was entitled to healing period benefits from July 27, 2005 through May 31, 2006. The district court affirmed this conclusion. On appeal, Mercy contends the agency conclusion was affected by errors of law and unsupported by substantial evidence.

The statute regarding healing period benefits states:

> If an employee has suffered a personal injury causing permanent partial disability for which compensation is payable as provided in subsection 2 of this section, the employer shall pay to the employee compensation for a healing period, as provided in section 85.37, beginning on the first day of disability after the injury, and until the

> employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

Iowa Code § 85.34(1).

The commissioner wrote:

> While claimant may have speculated that she was able to return to some nursing job if given the chance, the fact remains that she was not given the chance and was terminated from her job because of her work related permanent restrictions and could never return to emergency room staff nurse without an accommodation. Consequently, she was not medically capable of returning to employment substantially similar to employment in which she was engaged at the time of the injury.

The commissioner's ruling was a correct application of the statute and we agree with the district court that the fact findings on which it was based were supported by substantial evidence. No useful purpose would be served by recounting those fact findings or the record evidence supporting them.[2]

IV. Disposition

We affirm the district court's determination that the agency's findings relating to healing period benefits are supported by substantial evidence and the agency's conclusion on this issue is not affected by errors of law. We reverse the district court's conclusion that Plumb's injury "arose out of" her employment and we remand to the district court for an order directing the commissioner to

[2] We note, of course, that the issue of healing period benefits would become moot if the commissioner determines on remand that Plumb's injury did not arise out of her employment under the "actual risk" standard as delineated in *Lakeside Casino*.

reevaluate the facts using the “actual-risk” approach articulated in *Lakeside Casino*.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.