STATE OF MICHIGAN

COURT OF APPEALS

ALESIA HARRIS, Personal Representative of the Estate of HENRY J. HARRIS, Deceased, Plaintiff-Appellant, v GENERAL MOTORS CORP., Defendant-Appellee.	UNPUBLISHED November 24, 2009 No. 285426 WCAC LC No. 06-000256

Before: O'Connell, P.J., and Talbot and Stephens, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the Workers' Compensation Appellate Commission's opinion and order affirming the magistrate's decision denying plaintiff's claim for survivor's benefits. We affirm.

Plaintiff's decedent Henry Harris was employed at defendant's Saginaw Grey Iron plant. He suffered a fatal head injury near the end of his shift when he fell backwards onto the floor of a men's bathroom at the plant. There is no dispute that the fall caused the fatal injuries; the sole relevant issue was whether decedent's fall was work-related or an "idiopathic" fall attributable to some cause personal to decedent. Decedent's coworker Justo Gonzalez was the only witness to decedent's fall. He testified that he was in the men's room walking from the urinals to the sink when decedent entered the room. Gonzalez saw decedent head towards the urinals. As Gonzalez washed his hands, he heard a loud thud, then saw decedent lying on the floor near him. Decedent's eyes were rolled back in his head at first, and there was blood coming from his left ear. Decedent apparently fell backwards without making any movement with his arms or hands to protect his head, which struck the concrete floor directly. There was no water or other foreign substances on the floor that would make it slippery.

Saginaw County Medical Examiner Dr. Kanu Virani performed the autopsy of decedent and determined that the cause of death was blunt force trauma to the back of the head which resulted in a skull fracture and subdural hematomas on both sides. Dr. Virani found no evidence that decedent had suffered an aneurism or stroke before falling, but could not rule out abnormal electric problems with decedent's heart. Dr. Virani believed that decedent's injuries were consistent with a sudden backwards fall caused by losing one's footing on a slippery surface, but admitted that falling people would instinctively try to protect their head with their hands and arms and that there was no sign that decedent had done so in this case.

Defendant's expert, neurosurgeon Dr. David Carr, believed that decedent's injuries were caused by a direct fall to the ground unrelated to any slipping or tripping. Dr. Carr believed that decedent was unconscious at the time he fell backwards onto the floor. Carr testified that the evidence suggested that decedent fainted and fell straight down rather than a slip and fall, which would have resulted in decedent throwing out his arms and hands to stop the fall or protect his head. Decedent had high blood cholesterol and a family history of heart disease. He also had an unusually slow heart rate, which could have caused him to become dizzy and fall. Decedent had complained of a headache and neck pain earlier in the week. Dr. Carr believed that decedent could have suffered spontaneous intracranial bleeding immediately before the fall.

In his written opinion the magistrate noted that under MCL 418.301 plaintiff bore the burden of proving by a preponderance of the evidence that the decedent's injury arose out of and in the course of his employment. The magistrate found that to recover in this sort of "level floor – idiopathic fall" case, the plaintiff must show that decedent's work contributed to the fall or that something at work increased the risk of harm which could be suffered by such a fall. The magistrate found both plaintiff and Gonzalez to be credible witnesses, noting that Gonzalez's testimony was consistent with his statements to police and defendant's investigators. The magistrate noted that the evidence "overwhelmingly shows, and I so find, that [decedent] fell backward and struck his head directly on the floor."

With regard to the cause of decedent's fall, the magistrate noted that the medical experts all agreed that decedent could have fainted from lesser medical problems than an aneurism or stroke and found that fainting was the most plausible explanation for decedent's abrupt fall. Decedent's unusually slow heart rate could have led to his fainting. The magistrate rejected Dr. Virani's theory that decedent slipped and fell in favor of Dr. Carr's testimony that decedent fainted:

> [N]one of the medical experts can say he didn't just faint. In fact, there are no wet spots to slip on, no fumes to make Mr. Harris pass out, and each expert admitted you could just faint from lesser physical problems. Most telling is the way Mr. Harris fell, without making any attempt to throw up his arms or hands to protect his head, which is indicative of a dead faint.
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> Dr. Carr's testimony conclusion that [decedent's] head injury resulted from a direct unprotected fall, as if in a faint, is more logical and consistent with the evidence submitted at trial. Most telling is the fact all three experts agree there is no physical evidence such as bruises or contusions on the hands, elbows, or the like to indicate Mr. Harris made any attempt to protect his head. All three experts agree that a dead faint type scenario best explains why a falling person would not make such an involuntary movement to protect the head.
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> [W]hen all the evidence is weighed, it clearly indicates, and I so find, that Plaintiff did not slip, but fell as if in a faint, without any effort to protect his head, and struck it directly on the concrete floor.

Citing *Ledbetter v Michigan Carton Co*, 74 Mich App 330; 253 NW2d 753 (1977), the magistrate found that the facts presented the "classic level-floor . . . idiopathic fall case" where the plaintiff must show that decedent's work somehow contributed to his fall or increased the risk of harm from or after decedent's fall. The magistrate concluded:

> Simply put, [decedent] passed out for some unknown cause of a purely personal nature and fell as if in a dead faint striking his head, without any evidence of a work inducement, such a fumes, sticky or slippery floor, etc.
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> Equally unfortunate for plaintiff, there is no evidence of a work environment which increases the risk of harm.

Plaintiff raised three arguments in her appeal to the Workers' Compensation Appellate Commission: (1) that the magistrate misunderstood or grossly mischaracterized Mr. Gonzalez's testimony; (2) the magistrate erred in favoring expert testimony indicating that decedent fainted over more convincing expert testimony that decedent must have lost his footing on a slippery floor; and (3) that the magistrate erred by failing to find that decedent's work environment placed him at higher risk of injury from a fall.

The WCAC affirmed the magistrate's decision, with the majority of commissioners holding that the magistrate's ultimate findings were supported by competent, material, and substantial evidence. The Commission agreed with plaintiff that the magistrate erroneously mixed Mr. Gonzalez's testimony with written statements from other sources, but found any error harmless, explaining:

> No one knows how or exactly where Mr. Harris was standing or walking when he fell. All were in agreement however, that Mr. Harris fell backwards, landing with his head near the floor drain and near where Mr. Gonzalez stood at the wash basin. While the magistrate was not correct when he assumed the decedent was standing at the urinals when he fell, the magistrate's error was harmless. First, the magistrate only made these misstatements in his summary of the facts, not in his findings and conclusions. Second, no one knows the precise location the plaintiff was standing when he fell. Regardless of whether Mr. Harris was standing or was moving at the time of his fall, all agree he fell backwards and there is no evidence he was moved prior to the arrival of the paramedics. Therefore, we do know Mr. Harris must have been standing or walking in the area between the urinals and the floor drain when he fell backwards.
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> Mr. Gonzalez did not testify he heard Mr. Harris moan before he fell. However, that statement is attributed to Mr. Gonzalez in the medical records and is repeated multiple times throughout the hospital's history. The medical records were admitted without objection. Since the plaintiff did not object to the medical records it is not surprising the alleged pre-fall "moan" would be contained in the magistrate's summary of the facts. The magistrate credited the statement to the testimony of Mr. Gonzalez, rather than the medical records. Once again, we note the magistrate made this error in the summary of facts and not in his findings and conclusions. We concluded any error was harmless.

The WCAC majority concluded that the magistrate reasonably chose Dr. Carr's explanation over that proffered by plaintiff and Dr. Virani, explaining:

> The magistrate gave more weight to the deposition of Dr. Carr. He found the testimony of Dr. Carr more logical and consistent with the testimony at trial, because all of the expert witnesses agreed the plaintiff did not have any protective injuries. He did not find credible Dr. Virani's explanation for why Mr. Harris did not break his fall. After review of the evidence, we find the magistrate's choice between conflicting expert opinions was reasonable. We will not disturb that choice.

The Commission majority noted that the magistrate found no evidence of water, debris, or slippery substances on the floor and pointed out that even if they adopted the testimony of Dr. Virani, they would still have to speculate regarding the cause of decedent's fall.

Finally, the WCAC majority rejected plaintiff's argument that decedent's work environment placed him at higher risk of injury as unsupported by the facts. The WCAC pointed out that the risk of falling onto a hard tile or concrete floor "does not establish an increased employment risk." The Commission found that the requisite evidence supported the magistrate's conclusion that there was no water or debris on the floor at the time plaintiff's decedent fell.

Plaintiff raises four arguments on appeal: (1) that the magistrate and Commission based their findings on evidence not present in the record; (2) that the Commission failed to follow correct legal standards regarding plaintiff's burden of proof; (3) that plaintiff sustained her burden of proof; and (4) that decedent's injuries arose out of and in the course of decedent's employment and so were compensable.

This Court's review of a WCAC decision is limited. In the absence of fraud, if there is any competent evidence in the record to support them, we consider the WCAC's findings of fact conclusive. MCL 418.861a(14); *Rakestraw v Gen Dynamics Land Systems, Inc*, 469 Mich 220, 224; 666 NW2d 199 (2003); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000). If it appears that the WCAC carefully examined the record, was duly cognizant of the deference to be given to the decision of the magistrate, did not "misapprehend or grossly misapply" the substantial evidence standard, and gave an adequate reason grounded in the record, the judicial tendency should be to affirm. *Mudel*, *supra* at 703-704; *Holden v Ford Motor Co*, 439 Mich 257, 269; 484 NW2d 227 (1992). This Court does not independently weigh the evidence, nor does it directly review the magistrate's decision. *Mudel*, *supra* at 699-701, 709. Questions of law are reviewed de novo on appeal. *Rakestraw*, *supra* at 224.

I.

With regard to plaintiff's second argument, we conclude that the Commission did not commit an error of law by finding that plaintiff had to show a causal relationship between a work-related event and decedent's injury or that decedent's injury was somehow aggravated by the conditions at work.

An injury of an unknown or idiopathic origin is not compensable simply because it occurred while the employee was in the course of employment on the employer's premises.

Ruthoff v Tower Holding (On Reconsideration), 261 Mich App 613, 618; 684 NW2d 888 (2004); *Hill v Faircloth Mfg Co*, 245 Mich App 710, 717; 630 NW2d 640 (2001); *McClain v Chrysler Corp*, 138 Mich App 723, 730; 360 NW2d 284 (1984); *Ledbetter*, *supra* at 334. An injury does not "arise out of" employment under MCL 418.301(1) "unless some causal relationship exists between a work-related event and the disabling injury." *Ruthoff*, *supra* at 618. As a general rule an injury does "not arise out of employment where the predominant cause of the harm was attributable to personal factors and the circumstances of the employment did not significantly add to the risk of harm." *Ruthoff*, *supra* at 619. In *Ledbetter*, this Court explained:

> In personal risk cases, including idiopathic fall situations, the sole fact that the injury occurred on the employer's premises does not supply enough of a connection between the employment and the injury. Unless some showing can be made that the location of the fall aggravated or increased the injury, compensation benefits should be denied. [*Ledbetter*, *supra* at 335-336].

The Commission majority followed the "level floor – idiopathic fall" rule from *Ledbetter* with regard to an unexplained fall on the employer's premises. Plaintiff has not shown any error of law.

II.

Plaintiff's first, third, and fourth arguments challenge the magistrate's findings as unsupported by the evidence. As noted above, this Court does not review the magistrate's findings to determine whether they are supported by the evidence, but instead engages in limited review of the Commission's findings to ensure that it followed the proper administrative review process and complied with the law. *Mudel*, *supra* at 699-701, 709-710. The Commission carefully reviewed the record, afforded proper deference to the magistrate, and did not misapply the substantial evidence standard when reviewing the magistrate's findings. To the extent plaintiff challenges the Commission's findings rather than the magistrate's, we note that the Commission's findings are conclusive if there is any competent evidence to support them. MCL 418.861a(14); *Rakestraw*, *supra* at 224. The record contains competent evidence in support of the Commission's findings of fact, so those findings are conclusive.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael J. Talbot
/s/ Cynthia Diane Stephens