Below the Red Line

Heyl Royster

Workers' Compensation Newsletter

A Newsletter for Employers and Claims Professionals *January 2010*

A Word from the Practice Group Chair

January's treacherous weather typically leads to an influx of slip and fall claims. This month Erin O'Boyle of our Springfield office has written an article that focuses on fall-down cases, specifically those which are deemed idiopathic and unexplained.

As reported in our last newsletter, Illinois Workers' Compensation Commission Chairperson Amy Masters named our partner Bruce Bonds to a committee to examine the current workers' compensation rules. Bruce reports that the committee has had several meetings and has more scheduled for 2010. If any of you have suggestions for new workers' compensation rules or changes in current rules, please email Bruce Bonds at bbonds@heylroyster.com.

We want to again remind you that the SafeWorks Illinois Work Injury Conference is scheduled in Chicago on February 11, 2010. Our firm is a sponsor and I am a presenter at that event. More information can be obtained at www.safeworksillinois.com or by calling Christie Volden at (217) 356-6150.

May each of you have a safe and prosperous new year!

Kevin J. Luther
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This Month's Author:

Erin O'Boyle is an associate in the firm's Springfield office. She began her career with Heyl Royster by clerking for the firm in the Urbana office. During law school at the University of Illinois, Erin participated in the Fredrick Douglass Moot Court Competition. She worked as a research assistant for a law professor and as an intern for Prairie State Legal Services. Erin focuses her practice on the defense of workers' compensation and civil litigation.

SafeWorks Illinois Annual Work Injury Conference

February 11, 2010

Conference & Learning Center at
U.S. Cellular Field
Chicago, Illinois
8:00 a.m. - 5:00 p.m.

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www.safeworksillinois.com or
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FALLS OF "IDIOPATHIC" OR "UNEXPLAINED" ORIGIN – WHAT MAKES THESE CLAIMS COMPENSABLE?

The question of what constitutes a compensable fall arises frequently in the employment setting. Workplace falls, like all other types of accidents, are evaluated in accordance with the risks faced by the employee in performance of work or from the work environment itself. Generally speaking, an employee is exposed to three types of risks: (1) those directly associated with employment; (2) risks personal to the employee; and (3) neutral risks that have no employment or personal characteristics. *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 352, 732 N.E.2d 49 (5th Dist. 2000). Workplace falls that result directly from employment risks include falls from defective floors or stairs or other premises defects such as accumulated ice or snow, and are beyond the scope of this newsletter. This article is focused on the latter two risk categories, specifically on falls categorized as "idiopathic" and "unexplained" in origin.

Idiopathic falls are those that originate from an internal, personal nature and may include personal defects, illnesses, weaknesses, and/or confrontations with co-workers or other individuals. Examples include falls due to bad knees, prior non-occupational injuries, fainting, or dizziness. *Unexplained falls* are those which have no obvious employment connection and which are not personal to the employee. Examples of unexplained falls include those occurring while walking on level ground or falls down stairs, where there is no true surface defect, such as those cases where the employee merely missteps or mistakenly thinks he is at the bottom of a flight of steps, when he is actually two steps up.

It used to be thought that compensability hinged on the distinction between idiopathic and unexplained falls – the former being not compensable, while the latter is deemed compensable. However, decisions of the past few years have shown that the compensability of a fall rests not on its classification but rather on the nature of the risk presented by the employment. Thus, while Illinois generally denies compensation for idiopathic falls, an exception exists where the employment increased the nature and extent of the likely injuries. This exception also applies to injuries caused by unexplained falls.

In both scenarios, the question of compensability does not focus on the explanation for the fall, but rather on the risk associated with the consequences of the fall. Thus, injuries caused by idiopathic or unexplained falls will be deemed to have arisen out of the employment "where work place conditions significantly contribute to the injury by increasing the risk of falling or the effects of a fall." *Illinois Consolidated Telephone Co.,* 314 Ill. App. 3d at 352. As explained in the concurring opinion in *Illinois Consolidated Telephone Co.,* "[t]he added risk may be due to some physical circumstance of the immediate vicinity or due to tools, implements, or apparatus the employee is required to use in his duties." *Id*.

Given these cases, we can look at two similar fact patterns and see how the law views potential compensability. Suppose a worker has epilepsy and suffers a grand mal seizure while at work. As a result of the seizure, he falls to the ground and strikes his head on the concrete floor. This accidental fall would be classified as an idiopathic fall and because the risk of injury was the same as faced by a member of the general public, it would likely be deemed non-compensable. However, assuming this same employee is a welder or ironworker and suffers the seizure while working on an I-beam suspended fifty feet in the air. In that case, the claim would likely be found compensable since the employment (the added height from working on the elevated I-beam) increased his risk of injury from the fall. The same conclusion might follow if the employee was working on an incline with a weed-whacker and sustained injuries as a result of falling on the device.

This exception is essentially an extension of the risk analysis used in most cases – at the time of the fall, did the employee face a risk that was greater than the risk faced by members of the general public? In other words, did the employment conditions expose the employee to an added or increased risk of injury?

EXEMPLAR CASES

In *Prince v. Industrial Comm'n*, 15 Ill. 2d 607, 155 N.E.2d 552 (1959), the employee, who was a known epileptic, had gone into the basement to get a bucket of water for use in his work. While in the basement, the employee retrieved the water, then sat down to talk with his co-workers. When he rose, he suffered an epileptic seizure and fell to the ground, striking his head on the concrete floor. He later died from his injuries. The Supreme Court upheld the Commission's denial of compensation on the ground that the concrete floor presented no risk or hazard not encountered in many places by the general public. The employee's fall was personal or idiopathic and there was nothing about the fall or the injury that resulted from an increased risk of employment.

Similarly, the employee in *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d 238, 505 N.E.2d 1062 (1st Dist. 1987), saw his award overturned by the Appellate Court when it determined that his fall was idiopathic in nature and therefore not compensable. The arbitrator, Commission and Circuit Court had all determined his fall was unexplained and awarded benefits. The petitioner had fallen while walking down a flight of stairs. He had a history of pain radiating in his back and down his right leg due to a previous work related back injury, as well as a back injury from a car accident. The Appellate Court explained that the "[c]laimant's own testimony and the medical evidence clearly demonstrate that the fall resulted from an internal, personal origin as a result of the prior automobile accident. Claimant consistently stated that his right leg gave out while he was walking down the stairs." *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d at 274. The Court further refused to apply the increased risk exception, stating that the act of walking down the stairs did not establish a greater risk than those faced when outside work and determined the exception was not satisfied. In order to recover for an unexplained fall, a petitioner must do more than show an "inability to explain why a fall occurred. In addition to such inability, a claimant must present evidence supporting a reasonable inference that the fall stemmed from an employment-related risk. After all, the arising out of requirement contemplates a causal connection between the accidental injury and some risk incidental to or connected with the activity an employee must do to fulfill her duties." *Builders Square, Inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 1010, 791 N.E.2d 1308 (3d Dist. 2003).

This rule is illustrated in *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 105, 853 N.E.2d 799 (1st Dist. 2006), where the petitioner fell while retrieving her lunch bag from the employee restroom. At arbitration, the petitioner testified that she did not know why she fell and no direct evidence was presented establishing the cause of her fall. Regardless, the arbitrator concluded that since there was no evidence presented showing that the bathroom floor was clean and free of debris, it could be reasonably inferred that the floor was dirty and that was the cause of the petitioner's fall and awarded benefits. The lower court determined that there was no idiopathic cause for the fall and therefore, the cause of the fall must have been neutral in origin. The restroom was not open to the public. The Appellate Court overturned the decision, explaining that the lack of evidence of dirt was not enough to establish that the injury arose out of the employment. In fact, the Court went so far as to state "[w]here the evidence allows for the inference of the nonexistence of a fact to be just as probable as its existence, the conclusion that the fact exists is a matter of speculation, surmise, and conjecture, and the inference cannot be reasonably drawn." *First Cash Financial Services*, 367 Ill. App. 3d at 106.

In *Builders Square, inc. v. Industrial Comm'n*, 339 Ill. App. 3d 1006, 791 N.E.2d 1308 (3d Dist. 2003), the Appellate Court denied compensation to the husband of a deceased employee explaining that the decedent's fall did not arise out of her employment. The testimony established that moments before the fall, the decedent was alert, talking, and appeared to be completely normal. The decedent had a history of falls and had been tested for a heart condition although never treated for one. Although the Commission denied benefits, the circuit court determined the fall was unexplained and therefore found it compensable. The Appellate Court found that the fall was idiopathic in nature, did not result from any work-related risk, and therefore denied benefits.

DOES "POSITIONAL RISK" COME INTO PLAY?

Positional risk – the notion that if the employee was at work or performing a work-related function when the idiopathic or unexplained fall occurred and thus is compensable – is not the law in Illinois, although some outcomes may suggest that it is. A closer look at the cases, however, shows that the trier of fact focused on an increased risk arising from the employment relationship.

For example, in *Lightcap v. Royster Clark, Inc.*, 06 IWCC 0778, 2006 WL 3039581 (Sept. 11, 2006), the Commission upheld the award of benefits for an unexplained fall where the petitioner was returning to work from the lunchroom and fell, injuring her left wrist and ankle. The petitioner testified that she went to step forward and felt a hesitation, then fell. There was no evidence that the she tripped or slipped due to some defect in the floor nor was there any idiopathic cause for her fall. The Commission found that the petitioner had an accident and suffered

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injuries which arose out of and in the course of her employment with the respondent. According to the Decision and Opinion on Review, "the Commission [inferred] that the condition of the premises where Petitioner fell, *i.e.*, the change from a tile to a carpeted surface separated by a strip, contributed to her fall and presented a risk of injury." *Lightcap*, 2006 WL 3039581 at *1.

Similarly, in *Knox County YMCA v. Industrial Comm*'n, 311 Ill. App. 3d 880, 725 N.E.2d 759 (3d Dist. 2000), the Appellate Court affirmed the Commission's award of compensation to a petitioner who fell down the stairs while leaving an employer-mandated CPR class. The class was scheduled shortly after her normal work day and did not leave time for the petitioner to eat. As a result, she stopped at a drive-through and grabbed a sandwich and soft drink.

When the petitioner arrived at the class location, she discovered that she had already taken the class and needed a more advanced CPR. The petitioner started to leave the building and while coming down the stairs, she fell. At trial, she testified repeatedly that she thought she was at the bottom of the stairs and missed a step. At the time of her fall, the petitioner had a soft drink in one hand and her purse in another. The Court explained that she would not have been at the CPR class nor had the drink in her hand if it were not for the employer.

> [S]he was performing an act that she was instructed to perform by respondent. It is true that there is no evidence that the stairway was poorly lit, that the stairs in question were defective, and that there was anything on the stairs that caused claimant to fall. Moreover, we acknowledge that, in and of itself, the act of descending a staircase at the employer's place of business does not establish a risk greater than that faced by the general public. However, as the Commission noted, the presence of the soft drink in one hand and the purse in the other, both of which claimant would not have had absent the mandatory CPR class, increased the risk to claimant. Absent the purse and the soft drink in her hands, claimant would have been able to grab onto the stairwell's railings. *Knox County YMCA,* 311 Ill. App. 3d at 885.

Although the Court determined that the fall was an unexplained fall based on the fact that there was no definite cause, the Court found that the employment had increased the risk of injury because the petitioner had been required to stop for food between the end of her shift and her scheduled CPR training and because she had to carry materials (a pen and paper pad) for the CPR training in her purse. These two items, it was concluded, prevented the petitioner from reaching out for the handrails and breaking her fall. Thus, while the items did not cause her fall, they nonetheless increased her risk of injury from an otherwise non-compensable idiopathic fall.

The Final Analysis

In the end, the question of whether a workplace fall injury "arises out of" the employment is primarily a function of risk. The terms "idiopathic" or "unexplained," while helpful to describe the nature of the fall, do not singularly define the compensability of the fall. When presented with a workplace fall, the relevant inquiry regardless of its origin is: was the employee's fall or the resulting injuries from the fall caused by the employee's exposure to a risk of injury greater than that to which the general public is exposed? If so, the fall is likely compensable.

If you have any questions concerning the compensability of employee falls at your workplace, please contact any of our workers' compensation attorneys.

VISIT OUR WEBSITE AT WWW.HEYLROYSTER.COM

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