2025 ACO #3

STATE OF MICHIGAN
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

EILEEN HOWELL,
PLAINTIFF,

V DOCKET #22-0019

STAPLETON'S CORNER MARKET, LLC AND
HOME OWNERS INSURANCE COMPANY,
DEFENDANTS.

APPEAL FROM MAGISTRATE KALES.

GARY A. KOZMA FOR PLAINTIFF,
KEITH P. THEISEN FOR DEFENDANTS.

OPINION

ROYAL, CHAIRPERSON

This matter came before the Workers' Disability Compensation Appeals Commission ("WDCAC")[1] on a timely claim for review filed by plaintiff Eileen Howell from an order of Magistrate Kevin Kales mailed November 28, 2022. That order denied plaintiff's claim for workers' compensation benefits from Stapleton's Corner Market, LLC and Home Owners Insurance Company, collectively referred to as "defendants." Both plaintiff and defendants have filed briefs in support of their positions on appeal, which we have reviewed.

Factual Background

Plaintiff worked at a Subway sandwich counter in Stapleton's Corner Market, prepping food, making sandwiches, baking bread, and waiting on customers. (Trial transcript at 15-16.) On the day of her injury, May 20, 2020, she was busy and had no time for a break. (*Id.* at 17-18.) She stated that she was "feeling just really hot" and "maybe a little dizzy." (*Id.* at 23-24.) Plaintiff initially testified that she passed out and fell to the floor while helping at the counter but subsequently admitted that she could not say for certain that she had not sat down first. (*Id.* at 24-25.) She also did not recall what part of her body struck the ground. (*Id.* at 24.) The emergency

[1] This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."

room records from Munson Medical Center, where plaintiff was taken after her fall, indicate that she had begun to feel lightheaded and overheated and sat in a nearby chair. (Plaintiff's Exhibit #2, Emergency Department Report of Katharine Venner, PAC.) When she felt a bit better, she stood up and had a "syncopal episode," fell to the ground, and struck the back of her head. (*Id.*) A neurological consultation yielded diagnoses of "probable postural hypotension, with a fainting spell versus other causes of her passing out," and traumatic subarachnoid hemorrhage. (Plaintiff's Exhibit #2, Consultation Note of Dr. Cilluffo.) It was further noted that plaintiff had not been taking her thyroid medication for the prior year due to "financial issues." (*Id.*)

Plaintiff was off work for a time after her injury, but ultimately returned to light duty in August 2020, and later to full duty in the same job she held at the time of her injury. (Trial transcript at 26-27.) She was still doing that job at the time of the hearing. (*Id.* at 27.) As a result, she sought benefits solely for the closed period of May 20, 2020, through August 12, 2020. (*Id.* at 10.)

Further testimony was taken from Dr. Stanley Sczecienski, who conducted a records review. (Dr. Sczecienski deposition at 4, 5.) The doctor reported, "This individual was involved in an event on May 20, 2020 where she became lightheaded, she sat down and she was feeling better and upon arising she then became lightheaded and passed out striking her head on the ground." (*Id.* at 14.) Dr. Sczecienski further stated plaintiff had a history of hypothyroidism, and that she was "exceedingly low on her thyroid level, which would accentuate the low blood pressure as well as the low heart rate, which would predispose her to being syncopal upon arising. . ." (*Id.* at 15-16.) He explained:

> A syncopal episode that is orthostasis is when the head changes a sudden position; seated to standing, supine or laying down to seated. That sudden changes - - in theory the body should contract and squeeze blood to go up to the brain. And if the body doesn't do so, the brain goes down to where the blood is, which means you pass out. (*Id.* at 25.)

Dr. Sczecienski did not believe that plaintiff's fall was related to her occupation. (*Id.* at 30.)

In an order and opinion mailed November 28, 2022, the magistrate found that plaintiff's fall and injury were the result of "purely personal" medical problems, and that her work environment neither aggravated the pathology of those conditions nor increased the risk of injury. Both weekly benefits and medical expenses were denied accordingly.

Plaintiff appeals.

Standard of Review

Findings of fact made by a magistrate are conclusive upon the WDCAC if supported by competent, material, and substantial evidence on the whole record. Substantial evidence is that which, considering the whole record, a reasonable mind would accept as adequate to justify the

conclusion. MCL 418.861a(3). Findings of fact made by a magistrate are conclusive upon the WDCAC if supported by competent, material, and substantial evidence on the whole record. Substantial evidence is that which, considering the whole record, a reasonable mind would accept as adequate to justify the conclusion. MCL 418.861a(3) and (4); *Mudel v Great Atlantic & Pacific Tea Company,* 462 Mich 691, 699-700; 614 NW2d 607 (2000). We review the magistrate's conclusions of law de novo. *Abbey v Campbell, Wyant & Cannon Foundry (On Remand),* 194 Mich App 341, 351; 486 NW2d 131 (1992). "Whether plaintiff's injury arises out of employment is a question of law that may be determined by [the WDCAC]." *Ruthruff v Tower Holding Corporation*, 261 Mich App 613, 618; 684 NW2d 888 (2004).

We consider "only those specific findings of fact and conclusions of law that the parties have requested be reviewed." MCL 418.861a(11); *Cane v Michigan Beverage Company*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000).

Issues to be Considered

Pursuant to MCL 418.301(1), workers' compensation benefits are payable to an employee who sustains a personal injury "arising out of *and* in the course of employment." (Emphasis supplied.) Defendants contend that plaintiff "is trying to blur the distinction, and conflate the idea of, being in the course of employment versus arising out of it." (Defendants' brief at 8.) It is accurate to say that, on the surface, plaintiff's brief appears to focus solely upon the requirement that an injury occur "in the course of employment" to the exclusion of the additional "arising out of" requirement. The headnote in her brief contends that . . .

> PLAINTIFF'S INJURY AROSE IN THE COURSE OF EMPLOYMENT BECAUSE THE UNCONTROVERTED MEDICAL TESTIMONY ESTABLISHED THAT CLAIMANT'S ACTION OF STANDING UP TO WAIT ON CUSTOMERS CAUSED HER BLACKOUT. (Plaintiff's brief at 2.)

Plaintiff further argues that the magistrate's "legal conclusion that Claimant's act of arising to wait on customers did not arise in the course of employment is contrary to law." (Plaintiff's brief at 6.)

This is potentially problematic because ". . . not every injury that occurs in the course of a plaintiff's employment is an injury that *arises out of his employment." Hill v Faircloth Manufacturing Company*, 245 Mich App 710, 717; 630 NW2d 640, 644 (2001) (emphasis in the original). See also *Ruthruff,* 261 Mich App at 618. However, while plaintiff's argument fails to make an explicit distinction between the separate elements of Section 301(1) of the Worker's Disability Compensation Act, she cites caselaw applicable to the "arising out of" as well as the "in the course of" requirement, including such cases as *McClain v Chrysler Corporation*, 138 Mich App 723, 725; 360 NW2d 284 (1984), *Ledbetter v Michigan Carton Company,* 74 Mich App 330; 253 NW2d 753 (1977), and *Ruthruff, supra.* As a result, we find that the issue has been preserved, as required by MCL 418.861a(11).

We further note that plaintiff and Dr. Sczecienski were extensively questioned by plaintiff's counsel in an effort to demonstrate that her work environment was unduly warm and that temperature played a role in her fall. All these issues were addressed in the magistrate's opinion:

> 1. The fall and injury sustained by plaintiff on May 20, 2020 was the result of a purely personal series of medical problems and was not caused or aggravated by the work in any manner.
> 2. This fall was idiopathic and the work environment did not aggravate the pathology nor did it increase the risk of injury in any way.
> 3. There is no medical evidence of record that this fall and injury were in any way caused or aggravated by the potentially hotter work environment. (Magistrate's opinion at 6.)

However, on appeal, plaintiff has offered a somewhat "stripped-down" theory of the case, arguing solely that the act of arising out of her chair to go wait on customers provided the required connection to her employment. No further arguments are made that the work environment played a role. Accordingly, it would appear that plaintiff is challenging only the first of the three findings reprinted above. We limit our consideration to the conclusions plaintiff asks us to review. MCL 418.861a(11); *Cane,* 240 Mich App at 80-81.

"Idiopathic Fall" Doctrine

This case falls within a line of authorities known somewhat inaccurately as "idiopathic fall" cases – an inaccurate description because the cause of the falls in those cases is often known and therefore not idiopathic at all. The seminal such case is *Ledbetter v Michigan Carton Company,* 74 Mich App 330; 253 NW2d 753 (1977). In that case, the employee suffered a seizure and fell on a level floor, suffering a fatal skull fracture. This incident was classified as an "idiopathic fall," which the Court explained was a fall "resulting from some disease or infirmity that is strictly personal to the employee and unrelated to his employment." *Id.,* at 333. In such a "personal risk" case, "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." *Id.* at 335-336.[2] Put another way, the Court stated, "To shift the loss in the idiopathic-fall cases to the employment, then, it is reasonable to require a showing of at least some substantial employment

[2] The *Ledbetter* Court distinguished "personal risk" cases from what it termed "neutral risk cases," where the employment itself required the employee to be at that location where exposure to the risk occurred." *Ledbetter,* 74 Mich App at 335. The Cout cited *Whetro v Awkerman,* 383 Mich 235; 174 NW2d 783 (1970), as an example of a neutral risk, a case in which a tornado destroyed a hotel where the employee was staying while traveling on business for his employer. The *Whetro* Court held the fact that the plaintiff's employment placed him in a location where he was exposed to a neutral risk provided the required connection to his work.

contribution to the harm." *Id.* at 336. Because the plaintiff in *Ledbetter* fell onto a level floor, the Court held that it was not compensable, reasoning: "It cannot be said with certainty that had the fall occurred at a different location, away from the employer's premises, the injuries would have been less serious." *Id.* at 337.

A different result was reached in *Hill v Faircloth Manufacturing Company*, 245 Mich App 710; 630 NW2d 640, 644 (2001). In that case and its companion case, the employees suffered from a personal condition, diabetes, which caused them to experience seizures while they were driving on their employer's business, resulting in serious accidents and injuries. The Court of Appeals wrote that "[d]riving a vehicle for their employers increased the level of risk involved in Hill and Frazzini's diabetic seizures and loss of consciousness. Further, both sustained injuries more severe than those they would suffer had they simply blacked out while standing on a level floor at work. In sum, their disabling or aggravated injuries were directly related to the vehicular accidents rather than to diabetes, even though the diabetes caused the accidents to occur." *Id.* at 719. Accordingly, the Court concluded, "Because the activity required by their employment placed them in a position of increased risk or aggravated their injuries, the injuries would be compensable even if an idiopathic condition caused them to lose consciousness." *Id.* at 720.

Analysis

In this case, plaintiff suffered from hypothyroidism, a "disease or infirmity that is strictly personal to the employee and unrelated to [her] employment." *Ledbetter,* 74 Mich App at 333. That condition was further complicated by the fact that she had not been able to afford her thyroid medication for a year prior to the work incident, an additional personal risk. As a result, the magistrate correctly analyzed this case under the "idiopathic fall" doctrine.

Applying the required analysis, the magistrate concluded, "This fall was idiopathic and the work environment did not aggravate the pathology nor did it increase the risk of injury in any way." (Magistrate's opinion at 6.) Plaintiff does not argue on appeal that her work aggravated her hypothyroidism. Instead, she contends that the fact that she was obliged to rise from her chair to go wait on customers increased her risk of injury. However, the risk of a syncopal episode occurring when she arose from a seated position was no greater at work than it would have been had she been at home or anywhere else. As the magistrate observed, "Our claimant simply sat down and then stood up. This is clearly an everyday activity and nothing about the work environment increased the risk of her unfortunate fall and hematoma." (*Id*.) This is consistent with the *Ledbetter* Court's statement that ". . . [i]t cannot be said with certainty that had the fall occurred at a different location, away from the employer's premises, the injuries would have been less serious." 74 Mich App at 337. The finding also removes this case from the ambit of cases like *Hill*, where the employment placed the employee in a location that increased the risk of injury. No location-based increased risk exists. That being the case, the magistrate correctly determined that plaintiff's fall was not compensable and denied all benefits accordingly.

Conclusion

The WDCAC has considered the record in this matter and the briefs of counsel and concludes that plaintiff failed to establish a work-related personal injury. The magistrate's order so finding is therefore affirmed.

Commissioner McMillan concurs.

Daryl Royal Chairperson

Duncan A. McMillan Commissioner

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This matter came before the Workers' Disability Compensation Appeals Commission (WDCAC)[1] on a timely claim for review filed by plaintiff Eileen Howell from an order of Magistrate Kevin Kales mailed November 28, 2022, denying her claim for workers' compensation benefits. The WDCAC has reviewed the record and the briefs of counsel and believes that the magistrate's order should be affirmed. Therefore,

IT IS ORDERED that the magistrate's order is affirmed.

No appeals pend.

Daryl Royal Chairperson

Duncan A. McMillan Commissioner

[1] This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."