IN THE COURT OF APPEALS OF IOWA

No. 8-892 / 08-0746
Filed February 4, 2009

BENCO MANUFACTURING and
AMERICAN CASUALTY COMPANY
OF READING, PA.,
Petitioners-Appellees,

vs.

REBECCA ALBERTSEN,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge.

A workers' compensation claimant appeals the district court's remand to the Workers' Compensation Commissioner. **REVERSED AND REMANDED.**

Thomas J. Currie of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Dorothy L. Kelley, Des Moines, for appellees.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Rebecca Albertsen appeals from a district court judicial review ruling reversing and remanding the appeal decision of the workers' compensation commissioner. We reverse the judgment of the district court and remand for entry of a judgment affirming the commissioner's award of benefits.

I. Background.

Albertsen worked the midnight shift at Benco Manufacturing on the day of her injury. While working she went to the lunchroom to get a cappuccino. She next walked to the restroom. After she opened the door she thinks/assumes the door hit her on the back of her head. Albertsen fell backward, striking her head on the concrete wall screening the restroom from the work area. When she woke up she was on the floor with her chin touching her chest and was "leaned up" against the concrete wall.

While Albertsen does remember getting a cup of cappuccino, she has little recollection of the circumstances of the accident. Albertsen does remember co-employee McKenna speaking with her and she remembers being asked if she was okay. She does not remember what she told people at the time of her fall.

McKenna witnessed the fall and believes Albertsen "passed out or blacked out, fainted as she walked through the – or shortly after she walked through the door." McKenna observed:

> I was on my way to the bathroom, and [Albertsen] had just come out of the cafeteria. She was by the wash station, heading towards the bathroom, and we waved at each other. She proceeded to the bathroom. I continued to do the same. [Albertsen] just got inside the bathroom door. [The door has a window in the top portion.] It closed. Her arms came up over her head, and she fell straight

> backwards into the door, forcing the door open, hit the back of her head on the wing wall, the concrete wall around the bathroom entrance, and collapsed there.

McKenna yelled for help and other employees came to the area. When Albertsen regained consciousness she was asked what happened. According to co-employee Laurie Daily, Albertsen "said her nose was stuffed up . . . she went to the break room to get a [drink] . . . to see if that would help clear her nose up." Albertson also told Daily "she doesn't remember anything after trying to enter the bathroom."

When the ambulance workers arrived, Albertsen was unable to move her right arm or right leg so she was transported to the emergency room. The hospital notes state Albertsen remembered drinking cappuccino and then walking to the bathroom, but she had no recollection of the event. The notes indicate she had a cold and upper respiratory infection for two weeks and had taken over-the-counter cold medications. Subsequently Albertsen had two surgeries: a C2-3 spinal fusion and a shoulder surgery. The medical evidence in the record is conflicting on whether or not Albertsen fainted. However, there is no question that Albertsen's fall caused serious injury. Dr. Found reported, "Albertsen sustained a C2 fracture as the result of a work-related injury; in which she fell backward and struck her head, slid down against a vertical surface, thus causing extra flexion and resulting in a C2 fracture." As a result of her fall Albertsen has ongoing physical problems.

Albertsen filed a petition for workers' compensation and, after a hearing, the deputy denied compensation. Albertsen appealed to the commissioner, who

stated, "the issue in this case involves only the arising out of element of causation." The commissioner reversed the deputy and found benefits were due based on two alternative rationales: (1) claimant experienced an unexplained fall and was entitled to benefits under the positional-risk doctrine; or (2) claimant experienced an idiopathic fall (falls due to personal conditions) and was entitled to benefits under *Koehler Elec. v. Wills*, 608 N.W.2d 1 (Iowa 2000). Benco appealed to the district court. The court ruled Iowa does not utilize the positional-risk doctrine and concluded the commissioner's idiopathic fall "analysis is confusing." The court reversed the commissioner and remanded for additional analysis specifically referencing the actual-risk doctrine. Albertsen appealed.

II. Scope of Review.

Iowa Code section 17A.19 (2007) lists the instances when a court may, on judicial review, reverse, modify, or grant other appropriate relief from agency action. We do not apply a "scrutinizing analysis" to the commissioner's findings. *Terwilliger v. Snap-On Tools Corp.*, 529 N.W.2d 267, 272 (Iowa 1995). Rather, we are bound by the agency's findings of fact if supported in the record as a whole and will reverse the agency findings only if we determine that substantial evidence does not support them. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006). The definitive question is not whether the evidence supports a different finding, but whether the evidence supports the findings that were actually made. *Id.*

Unlike the commissioner's findings of fact, "we give the commissioner's interpretation of the law no deference and are free to substitute our own

judgment." *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007). "On the other hand, application of the workers' compensation law to the facts as found by the commissioner is clearly vested in the commissioner" and may be reversed "only if it is irrational, illogical, or wholly unjustifiable." *Id*.

The issue on appeal is whether Albertsen's injury arose out of her employment. This is "a mixed question of law and fact." *Id*. The factual aspect "requires the commissioner to determine the operative events that gave rise to the injury." *Id*. The legal aspect is "whether the facts, as determined, support a conclusion that the injury arose out of the employment." *Id*.

When we review the district court's decision, "we apply the standards of chapter 17A to determine whether the conclusions we reach are the same as those of the district court. If they are the same, we affirm; otherwise, we reverse." *Mycogen Seeds v. Sands*, 686 N.W.2d 457, 464 (Iowa 2004).

III. Merits.

The term "arising out of" refers to a causal connection between the conditions of employment and the injury. *Miedema v. Dial Corp*., 551 N.W.2d 309, 311 (Iowa 1996). Initially, the commissioner analyzed the facts, concluded "claimant has sustained an unexplained fall," and noted this type of fall is part of the neutral risk classification. Next, the commissioner recognized "Larson has identified examples where a growing number of courts have adopted a positional . . . risk theory to award benefits in neutral risk injuries." *See* Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 9.01(4)(9)(b) at 9-8 (2007). The commissioner concluded claimant's unexplained fall is, therefore,

compensable. The commissioner, as an alternative, found the injury compensable as an idiopathic fall (falls due to personal conditions).

After the commissioner's decision, the Iowa Supreme Court discussed the positional-risk doctrine. *Lakeside Casino*, 743 N.W.2d at 174-77. Noting Iowa, with limited exceptions, rejected the increased-risk rule and adopted the actual-risk rule in 1990, the court stated: "Iowa has not adopted the positional-risk rule, and we decline to do so now under the circumstances presented by this case." *Id*. at 177; *see also Hanson v. Reichelt*, 452 N.W.2d 164, 168 (Iowa 1990) (rejecting the increased-risk rule and adopting the actual-risk rule).

On appeal, the district court concluded the commissioner had utilized the positional-risk rule and remanded the case for the agency to "apply the actual-risk doctrine."

We agree with the district court's conclusion the agency's utilization of the positional-risk doctrine is contrary to current Iowa law. However, this conclusion does not necessarily require a remand because the commissioner found Albertsen's injury compensable on an alternative basis: claimant experienced an idiopathic fall (falls due to personal conditions) and was entitled to benefits under *Koehler*, 608 N.W.2d at 1. Unlike the district court, we believe the alternative discussion, when considered in its entirety, reveals the commissioner correctly applied Iowa law. The commissioner stated:

> In the alternative, even if a personal condition of the claimant led to her fall – as the presiding deputy had concluded – claimant's striking her head on the concrete wall on her way down to the floor causing her broken neck would also render this case compensable following the reasoning previously discussed from the *Koehler* decision.

Therefore, to fully understand the alternative basis for awarding compensation, we must also consider the commissioner's previous discussion:

> Larson recognizes that injuries from personal risks or internal weaknesses are generally not compensable unless the employment contributes to the risk *or* aggravates the injury. Larson's at 9-1. To be compensable, *a fall due to a personal condition such as a momentary loss of consciousness caused by a personal medical condition* must be shown to have been caused or precipitated in part by some employment-related factor or *that the effects of the fall were worsened by the employment*. Consequently, injuries from idiopathic [personal] falls from heights and stairways *or the striking of one's head on a work structure on the way down to the floor* are generally viewed as sufficient to render the injury compensable. Larson's section 9.01(4) at 9-7 thru 9-9. However, idiopathic falls (falls due to personal conditions) onto level surfaces are generally not held compensable. Larson's section 9.01(4) at 9-7 thru 9-9. The [*Koehler*] decision indicates that Iowa falls into the majority of jurisdictions which allows recovery from idiopathic or personal risk falls from heights stating that claimant is not required to show by the evidence that the height from which he fell actually worsened the effects of the fall. The Court held that a fall from 3-4 feet clearly was sufficient by itself to show an employment contribution to the risk of injury.

(Emphasis added.) In *Koehler*, the Iowa Supreme Court relied extensively on Larson's treatise and ruled a fall from a ladder due to a personal reason, alcohol withdrawal, was compensable. *See Koehler*, 608 N.W.2d at 1. Noting Iowa law had "not previously addressed the compensability of idiopathic falls," the court stated:

> Generally injuries resulting from risks personal to the claimant are not compensable. Courts have, however, recognized an exception to this rule where the employment contributes to the risk or aggravates the injury. . . . Our assessment of the law from other jurisdictions finds support from Larson in his treatise on workers' compensation law, who concludes that the general rule requires that the employment must contribute to the hazard of the fall.

Id. at 4-5.

While the commissioner here did not expressly identify the actual-risk rule adopted by *Hanson* in 1990, neither did the *Koehler* opinion in 2000. *See id; Hanson,* 452 N.W.2d at 168. Additionally, *Koehler* and the recent *Lakeside Casino* case both cite to and utilize the same language from *Miedema* when explaining the "arising out of" employment element.

> [Claimant] must prove . . . that a causal connection exists between the conditions of his employment and his injury. . . . In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of his employment.

Miedema, 551 N.W.2d at 311 (Iowa 1996); *see also Lakeside Casino*, 743 N.W.2d at 169, 174; *Koehler*, 608 N.W.2d at 3. We conclude the commissioner's reliance on *Koehler* in resolving the "arising out of" issue is not irrational, illogical, or wholly unjustifiable.

Under *Koehler*, Iowa awards benefits for "injuries resulting from risks personal to the claimant . . . where the employment . . . aggravates the injury." *See Koehler*, 608 N.W.2d at 3. The cement wall screening the restroom door is related to the working environment and aggravated Albertsen's injury from her fall by breaking her neck. *See id*.; *Miedema*, 551 N.W.2d at 311.

We disagree with the district court's conclusion that the commissioner erred in ruling Albertsen's injury arose out of her employment. Therefore, we reverse the district court's judgment and remand for entry of a judgment affirming the commissioner's decision awarding workers' compensation benefits to Albertsen.

REVERSED AND REMANDED.