IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

August 16, 2002 Session

OLIVIA CONNOR v. CHESTER COUNTY SPORTSWEAR CO.

Direct Appeal from the Chancery Court for Chester County
No. 9175 Joe C. Morris, Chancellor

No. W2001-02114-WC-R3-CV - Mailed September 12, 2002; Filed October 18, 2002

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer appeals the award of disability benefits to an employee who felt her knee pop when she stood and twisted to flush the commode while using the restroom at work. We reverse.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right;
Judgment of the Trial Court Reversed.

JOE H. WALKER III, SP.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOE C. LOSER, SP.J., joined.

William F. Kendall III, Jackson, TN, for the Appellant, Chester County Sportswear.

Michael A. Jaynes, Jackson, TN, for the Appellee, Olivia Connor.

MEMORANDUM OPINION

The review of the findings of the trial court is de novo with a presumption of the correctness of the decision unless a preponderance of the evidence is contrary to those findings. Spencer v. Towson Moving & Storage, Inc., 922 S.W.2d 508 (Tenn. 1996).

The relevant facts are not in dispute. Claimant was forty-two years old and employed with Defendant as a seamstress. She is about five feet five inches tall and weighed approximately 260 pounds. Claimant awoke on the morning of the accident, got out of bed, and felt a little catch in her left knee. She went to work and after about an hour took a restroom break. The restroom had stalls that are described as basic stalls, no different from other stalls. The commode was a standard commode with a handle on the side, described as no different from a commode at home or anywhere else. Claimant described what happened after using the

commode: "As I started to get up, I had to turn to pull my pants up, and when I did, my knee twisted…." When asked, "But where you were twisting was to flush the commode. Correct?," she answered "Yes, sir."

Claimant testified that the twisting injury caused her to feel as if everything was torn in her left knee. Dr. Nord determined she suffered a torn medial meniscus in her left knee. He described her injury as caused by standing up and twisting at the same time. He tried conservative treatment, which did not help. An arthroscopy was performed to try to take care of the torn cartilage. She had an excessive amount of chondromalacia and arthritis, and the treatment was not successful. She ultimately required total left knee replacement. Her right knee began to have pain as a result of more pressure put on that knee. Following left knee surgery, Claimant's right knee continued to deteriorate and ultimately required total right knee replacement.

The employer treated the injury as non-compensable under the Workers' Compensation statute. The trial court awarded benefits.

As pertinent to the issue on appeal, the trial court found: "Personal comfort activities, such as seeking toilet facilities, are generally regarded as compensable. Even though the Plaintiff's use of the bathroom was not necessarily beneficial to the employer, it was a part of her employment because of its being necessary for healthy job performance. The use of the bathroom was sanctioned by and provided for the benefit of the employees, and therefore, the cause is compensable as arising out of the course and scope of her employment."

I.

T.C.A. § 50-6-102(a)(5) states the injury, in order to be compensable, must be one "arising out of" and "in the course of" employment. It does not state the employee must be doing something beneficial for his or her employer. Thus, the question focuses on whether the activity bears a reasonable relationship to the employment.

The phrases "arising out of" and "in the course of employment" are not synonymous. Woods v. Harry B. Woods Plumbing Co., 967 S.W.2d 768, 771 (Tenn. 1998). Both elements must be satisfied to impose liability on the employer. Thornton v. RCA Serv. Co., 188 Tenn. 644, 221 S.W.2d 954, 955 (1949).

"In the Course of Employment"

"In the course of" refers to the time, place and circumstances of the injury by accident. Loy v. North Bros. Co., 787 S.W.2d 916 (Tenn. 1990). Activities termed as "personal comfort activities" are generally regarded as necessities in the workplace. These include such incidental acts as seeking toilet facilities. This activity is generally found to be sufficiently related to employment to be in the course of employment.

In Carter v. Volunteer Apparel, Inc. (holding an employee had a compensable claim when injured in a break area prior to the commencement of normal working hours), the Court,

citing 1A Larson, Workmen's Compensation Law section 21 (1990), observes that "employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment unless the extent of the departure is so great that an intent to abandon the job temporarily may be inferred or unless the method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment." 833 S.W.2d 492, 495 (Tenn. 1992). Furthermore, according to Professor Larson, activities termed as "personal comfort activities" are generally regarded as necessities in the workplace and include eating, drinking, smoking, seeking toilet facilities, and seeking fresh air, coolness or warmth. Id. Therefore, Claimant was "in the course of" her employment while she was using the restroom.

"Arising Out of"

The "arising out of" requirement refers to the origin or cause of the injury. Woods v. Harry B. Woods Plumbing Co., 967 S.W.2d 768, 771 (Tenn. 1998). The "arising out of" requirement is satisfied when the employee's injury has a rational connection to his or her work duties. Braden v. Sears, 833 S.W.2d 496, 498 (Tenn. 1992).

As stated in Houser v. BI-LO, Inc., 36 S.W.3d 68 (Tenn. 2001), an injury arises out of employment "when there is apparent to the rational mind, upon a consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. The mere presence of the employee at the place of injury because of the employment is not sufficient, as the injury must result from a danger or hazard peculiar to the work or be caused by a risk inherent in the nature of the work. As one court has put it, the 'danger must be peculiar to the work . . . An injury purely coincidental, or contemporaneous, or collateral, with the employment . . . will not cause the injury . . . to be considered as arising out of the employment.'" (citations omitted).

This case is analogous to a case where an employee died by asphyxiation due to a piece of chewing gum lodged in his throat. The Tennessee Supreme Court found that no relationship existed between the duties required by Mr. Jones' employment and his swallowing of the gum, which resulted in his subsequent accidental death. In other words, the chewing of gum was not a risk incident to Mr. Jones employment. The Court found that to hold otherwise would expose the employer to risks not intended by the broad scope of the Workers' Compensation Act. Jones v. Sonoco Products, Inc., 1992 Tenn. LEXIS 144 (Tenn. 1992).

Considering the above, we find that Claimant's injury did not "arise out of" her employment. Upon a consideration of all the circumstances, there was not a causal connection between the conditions under which the work is required to be performed by Ms. Connor and the resulting injury. The mere presence of the employee at the place of injury because of the employment is not sufficient. Claimant could have twisted to pull up her pants and flush the commode at any restroom location. The injury has no rational connection to her work duties. The injury did not result from a danger or hazard peculiar to the work or be caused by a risk inherent in the nature of the work.

This ruling is consistent with decisions from other jurisdictions. According to Larson's Workmen's Compensation Law (2002), "several cases have held that precipitation of back injuries by motions connected with the use of the toilet, while they might be in the course of employment, did not arise out of employment." See section 21.05 "Necessary Relief from Discomfort—Seeking Toilet Facilities."

In Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996), an employee suffered a back injury as he turned to flush a toilet located on the employer's premises. Conceding that under the personal comfort doctrine the injury occurred in the course of claimant's employment, the Iowa Supreme Court concluded that the injury did not arise from the employment. It is not enough that the injury coincidentally occurred at work; rather, it must in some way be caused by or related to the working environment or conditions of the employment.

In Otto v. Moak Chevrolet, Inc., 36 Or.App. 149, 583 P.2d 594 (1978), an employee injured her back while readjusting her clothing after using the employer's restroom. In denying benefits the Court held that there must be some connection between the injury and the employment other than the mere fact that the employment brought the injured party to the place of injury. There must be some causal connection between the employment and the injury.

II.

Employer also maintains that it did not receive proper notice of the accident. However, in view of our ruling above, we find it unnecessary to address this issue.

The judgment of the trial court is reversed, and the case is dismissed.

Costs of appeal are taxed to the plaintiff-appellees.

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JOE H. WALKER III, SPECIAL JUDGE

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellee, Olivia Connor, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM