KAYLA LEIN, Employee/Appellant, v. EVENTIDE and MEADOWBROOK CLAIMS SERVS., Employer-Insurer/Respondents, and SANFORD HEALTH and BLUE CROSS BLUE SHIELD OF ND, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
DECEMBER 29, 2017

No. WC17-6101

ARISING OUT OF & IN THE COURSE OF. The employee's burden of proof to establish that her injury arose out of her employment is met upon showing that she fell and was injured on a stairway located on her employer's premises.

Determined by:
David A. Stofferahn, Judge
Patricia J. Milun, Chief Judge
Deborah K. Sundquist, Judge

Compensation Judge: William J. Marshall

Attorneys: Mac Schneider, Schneider, Schneider & Schneider, Fargo, North Dakota, for the Appellant. Beth A. Butler and Larry J. Peterson, Peterson, Logren & Kilbury, P.A., St. Paul, Minnesota, for the Respondents.

Reversed and remanded.

OPINION

DAVID A. STOFFERAHN, Judge

This matter comes before this court on remand from the Minnesota Supreme Court for reconsideration in light of the Kubis[1] and Hohlt[2] decisions. Supplemental briefs were submitted by the parties to address issues raised by those decisions. After due consideration, we conclude the decision of the compensation judge should be reversed for the reasons below.

BACKGROUND

The relevant facts are set forth in detail in our previous decision.[3] On January 19, 2015, while employed by Eventide, Ms. Lein fell and sustained injuries while descending a flight of stairs on the employer's premises. There was no dispute that Ms. Lein was in the course of her employment at the time of the injury. The employer and insurer denied liability, asserting that the employee's injury did not arise out of her employment.

The matter was heard by a compensation judge, who considered evidence and arguments of the parties with respect to the condition of the stairs at the time of the employee's fall.

Both parties submitted expert opinions to establish there was, or was not, "something wrong" with the stairs. The compensation judge denied the employee's claim, concluding she failed to establish that she had been exposed to an increased risk. He noted that significant factors in determining that the employee failed to show an increased risk included the lack of an OSHA investigation, the failure to show a "defect" in the stairs, and the employer's compliance with building codes.

The employee appealed and this court reversed. In reversing, we concluded the compensation judge committed an error of law by importing doctrine from general tort liability in contravention of the Workers' Compensation Act. The employer and insurer appealed to the Minnesota Supreme Court. Following a stay, the Minnesota Supreme Court issued an Order vacating the decision of this court and remanding the matter for reconsideration in light of its decisions in Kubis and Hohlt.

DECISION

The Minnesota Workers' Compensation Act specifically prohibits consideration of negligence in workers' compensation claims.[4] The legislature determined that workers' compensation law is a mutual renunciation of rights in which injured workers forego claims for loss of earning potential and instead receive limited wage loss benefits. Injured workers also forego claims for the intangible loss of enjoyment of life and instead receive permanent partial disability for impairment of function. In return for these waivers, injured workers are not subject to negligence defenses.[5] An employer is liable for an injury arising out of and in the course of employment, "without regard to the question of negligence."[6]

Ms. Lein's workers' compensation claim was clearly tried and decided under a negligence theory by the parties and the compensation judge. The parties both engaged experts to inspect, test, and offer opinions with regard to the condition of the stairs upon which the employee fell. The issues at hearing, the evidence presented, and the rationale for the result mirrored those in a premises liability case in district court. In such a case, a primary issue is whether there is a defect or something wrong with the premises.[7] The manner in which this case was tried and decided contravenes the statute's prohibition of the consideration of negligence.

Since the Minnesota Supreme Court decision in Dykhoff[8] was issued in 2013, a number of cases involving stairways have been considered by this court and by the supreme court.[9] In these cases, the focus has been a factual inquiry regarding the condition of the stairs and whether a defect was present, or some other explanation of why the employee fell that could be linked to the circumstances of her employment. This factual inquiry, we conclude, distracts from the ultimate issue. The use of stairs poses an increased risk, regardless of elements such as rushing, the presence of handrails, or slipperiness, as was alleged in the case before us. Prior stairway cases have, on the one hand, cited to the statute's prohibition of the consideration of negligence, while on the other hand, applied a negligence standard and required the employee to prove wrongdoing on the part of the employer. The approach taken in these prior stairway cases has contributed to the confusion for both employees and employers.

In an effort to clarify what has long been the standard under Minnesota workers' compensation law, and to provide employees and employers with a definitive approach to stairway

cases, we held in Roller-Dick[10] that for an employee who is injured on stairs located on the employer's premises, the stairs themselves constitute an increased risk and that injury is considered to have arisen out of the employment. This analysis and conclusion in Roller-Dick is determinative of the outcome in this case. Ms. Lein was in the course of her employment when she fell and was injured on stairs located on her employer's premises. Because her injury arose out her employment, her claim is compensable.

In its remand to this court, the supreme court directed that this case be reconsidered in light of its decisions in Kubis and Hohlt. We address the applicability of each in turn.

First, in Kubis, the employee suffered an injury while hurrying up a flight of stairs on her employer's premises. A compensation judge denied her claim for benefits upon determining that her testimony regarding whether she felt rushed on the stairs in order to log out on a timely basis was not credible, and she therefore failed to establish that she was exposed to an increased risk such that her injury arose out of her employment. This court reversed the compensation judge's denial, taking into consideration the employee's testimony that she was rushing in order to promptly report to the next shift. In reversing the decision of this court, the supreme court concluded that we had clearly and manifestly erred by rejecting the findings of the compensation judge, and had exceeded our scope of review.[11]

The supreme court's directive to reconsider the case at hand in light of the Kubis decision provides an opportunity to determine whether, in this case, we adhered to the proper standard of review in reversing the compensation judge's denial of Ms. Lein's claim. In our prior decision in this case, we took into account a lack of anti-slip treads and the employee's testimony that she slipped prior to her fall. Arguably, these considerations could be interpreted as findings contrary to those made by the compensation judge and beyond our scope of review, as outlined in Kubis.

On remand, we decline to engage in the factual inquiry relied upon in prior stairway cases because a focus on the issue of whether there was "something wrong" with the stairs conflicts with the explicit statutory prohibition of the consideration of negligence in workers' compensation cases. We reverse the compensation judge's denial of the employee's claim, and determine that her injury arose out of her employment, consistent with our decision in Roller-Dick. Our conclusion relies solely upon the compensation judge's finding that Ms. Lein was injured on a flight of stairs located on her employer's premises. In reaching this decision, we have not substituted factual findings for those of the compensation judge and have not exceeded our scope of review.

Second, in Hohlt, the supreme court affirmed this court's decision and our conclusion that the employee's fall and injury on an icy sidewalk located on the employer's premises arose out of her employment. The court determined that the icy sidewalk presented an increased risk, distinguishing the factual circumstances from those presented in Dykhoff. The court's discussion of the increased risk test emphasized the limitations of the applicability of the Dykhoff holding. As we decided in Roller-Dick, stairs cannot be considered a neutral condition. Similar to the icy sidewalk in Hohlt, stairs themselves increase the risk of injury. As Hohlt explained, the question is not whether people encounter a condition in their everyday lives, but whether that condition is encountered on the employer's premises and as a result of the employment.[12] Here, Ms. Lein fell and was injured on stairs located on her employer's premises and as a result of her employment, and it was the stairs

themselves which presented an increased risk of injury. Ms. Lein's injury, therefore, arose out of her employment and her claim is compensable.

The decision of the compensation judge is reversed and this matter is remanded to the compensation judge for determination of benefits to which the employee is entitled.

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[1] Kubis v. Cmty. Hosp., 897 N.W.2d 254, 77 W.C.D. 543 (Minn. 2017).

[2] Hohlt v. Univ. of Minn., 897 N.W.2d 777, 77 W.C.D. 509 (Minn. 2017).

[3] Lein v. Eventide, No. WC16-5961 (W.C.C.A. Dec. 7, 2016), vacated by order (Minn. Aug. 4, 2017).

[4] Minn. Stat. § 176.021, subd. 1.

[5] Minn. Stat. § 176.001.

[6] Minn. Stat. § 176.021, subd. 1.

[7] See, i.e., Baber v. Dill, 531 N.W.2d 493 (Minn. 2001).

[8] Dykhoff v. Xcel Energy, 840 N.W.2d 821, 73 W.C.D. 865 (Minn. 2013).

[9] See, i.e., Arrowhead Senior Living Cmty. v. Kainz, 860 N.W.2d 379 (Minn. 2015) and Williams v. Indep. Sch. Dist. No. 2396, 76 W.C.D. 197 (W.C.C.A. Feb. 17, 2016).

[10] Roller-Dick v. CentraCare Health Sys., No. WC17-6051 (W.C.C.A. Oct. 19, 2017).

[11] Kubis, 897 N.W.2d at 263.

[12] Hohlt, 897 N.W.2d at 783.