

08/09/2018

## There's Something About Stairy

Minnesota Supreme Court Affirms "Increased Risk" Test as Appropriate Standard for Injuries "Arising Out of Employment"

In a 4-2 decision issued yesterday the Minnesota Supreme Court held that "an injury arises out of employment when there is a causal connection between the injury and the employment" and that an employee sustained a compensable injury when she fell down a set of clean, well-lit and OSHA-compliant stairs while carrying a plant in both hands with her purse hanging off her elbow. *Roller-Dick v. CentraCare Health Sys. and SFM Mut. Co.*, A17-1816 (Minn. 2018). In doing so, it added to the growing body of case law interpreting the "increased risk test".

Roller-Dick worked on the second floor of an office building. Every work day she took the stairs from the second floor to leave. On the date of the injury, she began walking down the stairs, a purse hanging from her elbow and a plant in her hands. She slipped on the second stair out of ten, fell down the remaining stairs and fractured her left ankle. The stairs were coated with rubber and hand railings extended along both sides of the staircase. Roller-Dick testified at trial she fell because her rubber-soled shoes stuck to the rubber on the staircase. (She dropped this allegation on appeal.) At the time of her injury, the stairs were dry and compliant with building and OSHA codes.

A compensation judge denied her workers' compensation claim, finding her injury did not "arise out of" her employment. Roller-Dick appealed to the Minnesota Workers' Compensation Court of Appeals (WCCA).

The WCCA reversed, holding the compensation judge incorrectly applied the "increased risk" test to deny her claim. It ruled a flight of stairs could not be considered a neutral risk because stairs increased the likelihood and severity of an injury. The Court found Roller-Dick did not have to prove there was something about the staircase that further increased her risk of injury. Rather, they concluded the "stairs alone increased her risk, and therefore, [her] injury arose out of her employment."

The employer appealed to the Minnesota Supreme Court, which -----affirmed WCCA's decision, holding the undisputed circumstances of Roller-Dick's injury created an increased risk that she would fall and injure herself on the stairs.

The Supreme Court began its analysis by distinguishing between "special hazards" created by employment and hazards created by "neutral conditions" not inherently dangerous or risky but which still increase the employee's exposure to injury. To illustrate the latter type of case, they discussed their 1983 decision in *Kirchner v. Anoka* which held an employee's injury arose out of employment when he descended the stairs without using a handrail because other people were on the side of the stairs with the only handrail. Although the stairs were not obviously hazardous, Kirchner encountered a set of

circumstances – the need to descend the stairs without a handrail – that increased his risk of injury. Dykhoff, in contrast, was a “neutral condition” case involving an unexplained fall with no causal connection between her work environment and her injury; therefore, her injury did not arise out of her employment.

The Court also reviewed post- Dykhoff decisions. It distinguished Kubis from Hohlt. They considered Kubis as a case in which the WCCA inappropriately exceeded its standard of review and substituted its own factual findings and assessment of witness credibility. In contrast, they viewed Hohlt as a case involving misapplication of the law – the “increased risk” test. The Supreme Court affirmed the WCCA's position that Hohlt's employment exposed her to a hazard – an icy sidewalk – that caused her injury. According to the Court, Hohlt affirmed the core principles underlying its conclusion in Dykhoff : “[F]or an injury sustained on employer's premises to arise out of employment, the employee must have faced a hazard that originated on the premises as part of the working environment, thus supplying the requisite causal connection between the injury and employment. Such injuries are explained due to the employee's exposure to the hazard. Injuries caused by inexplicable slip-and-falls, as was at issue in Dykhoff, do not arise out of employment because employees in such cases have not faced a hazard which would explain the cause of their injury.” According to the Court, the rule is: “an injury arises out of employment when there is a causal connection between the injury and the employment.”.

The Supreme Court conceded there was nothing wrong with the stairs or stairway. Roller-Dick did not use the handrails while descending the stairs because she was carrying a plant and her handbag. “These circumstances created an increased risk that [she] would fall and injure herself on the stairs, thus satisfying the requisite causal connection between the workplace and her injury.” They felt the case was on point with *Kirchner*.

The Court majority rejected any attempt to, in their view, insert negligence concepts into the legal determination regarding whether an injury arose out of employment by considering the good or bad choices made by an employee which may have caused or even contributed to her injury. The Supreme Court explicitly noted, “We need not hold today, as the WCCA did, that stairs themselves are workplace hazards exposing employees to an increased risk of injury...Whether stairs generally are hazardous is a matter for another case and another record.”

Chief Justice Gildea, joined by Justice Anderson, dissented. The Chief Justice believed the majority misapplied the law, improperly merged the “arising out of” and “in the course of” requirements, and essentially created a single compensability test. She argued the majority ignored the “arising out of” causation standard and simply held that because the injury happened at work, it was compensable. Chief Justice Gildea concluded Roller-Dick failed to meet the “arising out of” requirement because the employer provided a “safe, non-hazardous stairway for its employees to use” and the employee chose not to use the provided handrails. She felt the Supreme Court's decision in *Kirchner* was consistent with her view because the employer in *Kirchner* provided only one handrail, and the injury was caused by the absence of a second handrail; therefore, it arose out of his employment. In other words, *Kirchner's* injury was compensable because he had no choice to use the single handrail; Roller-Dick's injury was not compensable because she had a choice to use either one of the two handrails and used neither. According to Chief Justice Gildea, “Nothing about Roller-Dick's employment dictated that choice.”

## OUR VIEW

We anticipate Minnesota's workers' compensation courts will continue to wrestle with the appropriate application of the “increased risk test” announced in Dykhoff. We are pleased the Minnesota Supreme Court affirmed the “increased risk” test as the appropriate standard for deciding when injuries “arise out of” employment. We are also pleased the Court did not adopt the WCCA's position that stairs are, as a matter of law, a hazardous condition and any fall on the stairs at work is compensable under Minnesota's Worker's Compensation statute. While we would have preferred the Supreme Court to explicitly reject that conclusion, we also recognize the Court appropriately exercised judicial restraint in not going beyond what was essential to decide the case.

Please contact any of the attorneys in O'Meara, Leer, Wagner & Kohl's Workers' Compensation Practice

Group if you have any questions about how the Supreme Court's holding in

may apply to your claims.