

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: JUNE 19, 2020

CLAIM NO. 201980527

WILLIAM BELL, III

PETITIONER

VS.

APPEAL FROM HON. JOHN MCCRACKEN,
ADMINISTRATIVE LAW JUDGE

REYNOLDS CONSUMER PRODUCTS AND
HON. JOHN MCCRACKEN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
REVERSING
AND REMANDING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and BORDERS, Members.

BORDERS, Member. William Bell, III (“Bell”) appeals from the February 7, 2020 Opinion and Order and the March 10, 2020 Order on Reconsideration rendered by Hon. John McCracken, Administrative Law Judge (“ALJ”). The ALJ dismissed Bell’s claim, finding he failed to prove his April 6, 2019 fall produced an injury in the course and scope of his employment with Reynolds Consumer Products

(“Reynolds”). On appeal, Bell argues his injury is compensable, either as the result of an unexplained fall or as the result of an idiopathic fall and the positional risk doctrine. We reverse and remand.

Bell testified by deposition on October 3, 2019. On April 6, 2019, Bell passed out while at work. Bell had never previously passed out. He felt “normal” when he arrived at work that day. Bell was standing near a transfer cart at the time of his fall. Bell testified he has no idea what he hit when he fell. He blacked out and the next thing he remembers is Jermaine Campbell (“Campbell”) standing over him. Bell stated he did not have loss of vision in his right eye until after the fall. When he awoke, he did not initially realize he could not see out of his right eye. Just prior to passing out, he did not feel well and was sweating. He suddenly became disoriented and fell. At the time of the fall, the transfer cart was near him and he held a wireless crane remote in his hand. The crane remote was approximately 10 to 11 inches long and five inches wide and was beside him when he awoke.

Campbell testified by deposition on November 19, 2019. He was working approximately twenty to twenty-five feet away from Bell immediately prior to the fall. Campbell glanced in Bell’s direction and noticed he was standing and “just staring.” Campbell yelled to Bell, but he did not respond. Campbell walked toward Bell, who started walking toward him. Bell was wearing a hard hat, safety shield, and safety glasses. He was also carrying a remote control for a crane. Campbell saw Bell fall and stated Bell’s body rolled while he was falling. Campbell was not sure if Bell struck anything as he fell. Bell’s hardhat, face shield, and safety glasses came off when he hit the floor. When Campbell reached Bell, he was

approximately twelve inches from a transfer cart, a permanent immovable structure. Bell was face down with his hardhat and safety glasses a few feet away. The face shield was still attached to the hardhat, but it was bent. Campbell helped Bell to a seated position and observed blood coming out of his eye.

William Cole Duley (“Duley”) testified at the hearing. Duley works in security and loss prevention. He did not witness the accident but provided first aid afterward. When Duley first saw Bell, he was in a seated position with a paper towel over his eye. Duley observed redness in the white part of the eye but stated nothing was coming out of the eye. He gave Bell some wet rags “because it was hot back there” but provided no other care. He noted Bell was taken from the premises by his fiancé.

Kristin Lucas (“Lucas”) testified at the hearing. She took Bell directly to the Baptist East emergency room. Lucas testified as follows concerning Bell’s condition when she arrived at Reynolds:

Q: And when you picked up Mr. Bell can you tell us what you saw as in relation to his eye?

A: Well, when he came out he had like a wet paper towel on his eye and it was like a rust color I'm assuming from where he was wiping or oozing something that was coming out of his eye. And I asked him to open up his eye because it was like closed, like stuck closed, and he kind of pulled it open and it was just like -- it was very gruesome. It was almost like smooshed.

Q: What was smooshed, the white part?

A: His eye -- his entire eyeball, like the whole thing.

Q: So was it one side smooshed more than the other side or just --

A: It looked -- honestly, just the whole thing was just like a big glob.

Q: Did it look bloody as well?

A: Yes. It was very red and had oozing stuff coming out of it.

Records from Baptist Health Louisville on April 6, 2019, the day of the accident, reflect Bell sustained a ruptured globe of the right eye. Bell had a dilated, non-reactive right pupil with blood in the anterior chamber. A CT of the head was read as showing an abnormal appearance of the right globe, likely related to prior corneal transplant. Bell was transferred to the University of Louisville for surgery.

Bell filed the October 18, 2019 report of Dr. Richard A. Eiferman. He opined as follows:

In my opinion, Mr. Bell's eye injury was a result of direct trauma to the right eye. Given the severity of his injury (traumatic wound dehiscence with prolapse of the intraocular contents and ultimate loss of vision) and the unaffected left eye (which also had a pre-existing corneal transplant) it is highly unlikely that it was caused by a blunt force trauma to the skull. In addition, Mr. Bell's injury could not have been caused by any other non-traumatic event such as hypertension.

The opinions above are based on over 40 years of clinical experience and are expressed within a reasonable degree of medical probability.

Bell's claim was bifurcated on the issue of work-relatedness of the eye injury. The ALJ's findings relevant to this appeal are as follows *verbatim*:

An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his workers' compensation claim. Snawder v. Stice, 576 S.W. 2d 276 (Ky. App. 1979).

Injury is statutorily defined in KRS 342.0011(1) as a work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment, which proximately causes a harmful change in the human organism evidenced by objective medical findings.

When the causal relationship between an injury and a medical condition is not apparent to a lay person, the issue of causation is solely within the province of a medical expert. Elizabethtown Sportswear v. Stice, 720 S.W. 2d 732, 733 (Ky. App. 1986); Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W. 2d 184 (Ky. 1981).

Whether a workplace injury arises out of employment requires considering three risk categories: 1) risks distinctly associated with employment, 2) risks that are idiopathic or personal to the worker; and 3) risks that are neutral. Vaccum Depositing, Inc. v. Dever, 285 S.W.3d 730, 733 (Ky. 2009). Bell's fall does not fit into category one. "Unexplained falls begin with a completely neutral origin of the mishap, while idiopathic falls begin with an origin which is admittedly personal." Id.

Kentucky has adopted a presumption that unexplained workplace falls arise out of the employment unless the employer presents substantial evidence to show otherwise. Id. "The employer cannot prevail in such a case unless it shows affirmatively that the fall was not work-related." Id.

Idiopathic falls may be compensable if work places the injured worker in a position that increases its dangerous effects. Id.; see also Indian Leasing Company v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1979). This increased dangerous effect may be a fall from a height, near machinery or sharp corners, or in a moving vehicle. Turbyfill at 24. The Court in Turbyfill stated the issue in idiopathic falls must be carefully distinguished from the medical question whether the final injury was in fact the result of the fall itself, rather than the idiopathic condition. Id.

In the present case, Bell stated that he passed out. He does not know what happened from the time he passed out until he came to with Campbell standing over him. Bell stated that just prior to the fall he felt ill and sweaty. There is no proof in the record to indicate that his work caused his feeling ill and sweaty just prior to his fall, differentiating him from a person whose work-related physical exertion may cause a heart attack who falls to the ground. While it may appear as though Bell's fall is unexplained, the evidence points to the fact that he fainted. He admitted that he passed out. Campbell saw him pass out and fall. The ALJ understands an "unexplained" fall to be one that has no explanation. Bell has an explanation for his fall in that he passed out. The ALJ relies on Bell and Baptist Hospital East records to find that he suffered a syncope episode and collapsed. Therefore, the fall is explained. The only remaining question is whether the syncope was caused by some condition of his work. There is no proof that his work caused the syncope episode. The ALJ relies on Bell and the medical records to find that Bell's fall fits the category of falls related to idiopathic and not "unexplained".

The second step in determining whether an idiopathic fall is compensable is to determine whether Bell's work placed him in a position of increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. Bell asserts that wearing his safety glasses and hardhat with face shield placed him at a greater risk of injury. He also asserts that his proximity to the platform and the handheld remote increased his risk in a fall.

Bell testified that he does not know if he fell on anything. The only eyewitness, Campbell, testified that he does not know if Bell fell onto anything as he fell. Campbell found him face down on the ground. Campbell remembers seeing Bell's hardhat, shield and safety glasses coming off Bell when he struck the floor. He described the plastic shield as being a little "cockeyed". No one knows if Bell's hearing protection came off his head. Additionally, there is no proof that Bell struck the platform with his body when he fell, or that the handheld wireless remote device he held struck his eye. There is simply no proof that his safety gear, or

anything near him, increased his risk of this injury. No one testified that his safety glasses were broken or had blood on them. It is the same for the other gear Bell was using at the time of his fall.

Dr. Eiferman, Bell's eye doctor, stated that Bell's eye injury was the result of direct trauma to the right eye, not blunt force trauma to the skull from the fall. There is no proof that Bell sustained direct trauma to the right eye when he fell. There is speculation as to what may have happened, but no proof. The Baptist Health Louisville records do not help on the issue of causation. The CT of the head was interpreted to show the right eye had an abnormal appearance of the right globe, likely related to the prior corneal transplant. There is no other explanation as to how this interpretation relates to the cause of Bell's eye condition.

The ALJ relies on Bell, Campbell, Dr. Eiferman and the Baptist Health Louisville records to find that Bell's job did not place him at a greater risk of injury. There is simply no proof that Bell struck, or was poked by, anything causing direct trauma to his right eye.

The ALJ finds that Bell has not met his burden of proof that his April 6, 2019 fall produced an injury in the course and scope of his work.

Bell filed a petition for reconsideration making essentially the same arguments he raises on appeal. The ALJ denied Bell's petition for reconsideration as a re-argument of his case in chief. The ALJ reiterated that Dr. Eiferman stated the eye injury resulted from direct trauma to the eye, not blunt force trauma to the head. However, the ALJ stated he did not find proof of direct trauma to the right eye.

On appeal, Bell argues the fall is work-related regardless of whether it was unexplained or idiopathic. Bell argues his fall is unexplained and Reynolds offered no proof otherwise. He contends Reynolds failed to affirmatively show the fall was not work-related and he is therefore entitled to the presumption of work-

relatedness. Bell argues it is insufficient for the ALJ merely to conclude the fall was idiopathic because he suffered a syncopal episode. The ALJ made no finding as to why he passed out. Bell asserts there is no evidence the blacking out and fall resulted from a personal medical risk such as high blood pressure, low blood sugar, epilepsy, or heart disease. He had no prior history of blacking out.

Bell argues he proved that he injured his eye in the fall. He showed an increased risk of injury and his eye was injured because his employment placed him in a position that increased the dangerous effects of the fall. At the time of the fall, he was wearing protective glasses, a hardhat, a mesh face shield, and was holding a handheld transmitter.

We begin by noting there is no question that the eye injury occurred while Bell was at work at Reynolds. The initial controversy involves whether Bell's fall was an unexplained or an idiopathic fall.

A review of Kentucky law on the issue begins with the case of Workman v. Wesley Manor Methodist Home, 462 S.W.2d 989, 900 (Ky. App. 1971), where benefits were denied to an employee who fell and broke her hip in the course of her employment. The facts indicated that the employee did not slip or stumble but fell after her back gave way due to an injury previously suffered in one or possibly two automobile accidents. The Court held that "an injury from a fall resulting during the course of the employment but solely from a cause or causes to which the work is not a contributing factor is not compensable." Id. at 901. The Court further noted that, under the "positional risk theory," benefits may be allowed for injuries sustained in a fall "if the employment places the employee in a position

increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle.” *Id.* (quoting Larson, *Workmen's Compensation Law*, § 12.11).

The Workman Court acknowledged there is a rebuttable presumption that an unexplained fall during the course of employment is work-related. However, the Court found that the rebuttable presumption had been reduced to a permissible inference by evidence that the employee's fall was not unexplained but, rather, resulted solely from a prior, non-work-related back condition. Consequently, the “old” Board was not compelled to find that the employment was a causative factor in the employee's injuries.

The continuing viability of the Workman decision was addressed in Jefferson County Public Schools/Jefferson County Board of Education v. Stephens, 208 S.W.3d 862 (Ky. 2006), in which the Supreme Court upheld a determination by the ALJ that the claimant sustained a work-related injury when she fell walking from a carpeted surface to a tile floor. There was evidence introduced the claimant might have experienced dizziness prior to her fall. However, the ALJ believed the claimant’s testimony that she did not experience any such dizziness. The Court stated as follows:

The burden is on an injured worker to prove every element of her claim, including that a workplace injury arose out of the employment. See Workman v. Wesley Manor Methodist Home, 452 S.W.2d 898 (Ky. 1971); Stasel v. American Radiator & Standard Sanitary Corp., 278 S.W.2d 721 (Ky. 1955). As explained in Arthur Larson and Lex K. Larson, Larson’s Workers’ Compensation Law, § 4 (2006), an analysis of whether a work-related injury arises out of employment begins with a consideration of the three categories of risk: 1.)

risks distinctly associated with employment (e.g., machinery breaking, objects falling, explosives exploding, fingers getting caught in machinery, exposure to toxic substances); 2.) risks that are idiopathic or personal to the claimant (e.g., a disease, internal weakness, personal behavior, or personal mortal enemy that would have resulted in harm regardless of the employment); and 3.) neutral risks (e.g. a stray bullet, a mad dog, a running amuck, lightning). Where an employment and personal cause combine to produce harm, the law does not weigh the importance of the two causes but considers whether the employment was a contributing factor.

Although one naturally infers that a fall in the workplace has something to do with the employment, proving that it arose out of the employment can be problematic when the reason that it occurred is unexplained. Workman v. Wesley Manor Methodist Home, *supra*, stands for the principle that an unexplained workplace fall is presumed to arise out of the employment unless the presumption is rebutted. The court determined subsequently in Indian Leasing Company v. Turbyfill, [*supra*], that even an idiopathic fall may be compensable if work placed the individual in a position that increased its dangerous effects.

We explained in Magic Coal Co. v. Fox, 19 S.W.3d 88, 95 (Ky. 2000), that rebuttable presumptions are governed by KRE 301. Such a presumption shifts the burden of going forward with evidence to rebut or meet it to the party against whom it is directed, but it does not shift the burden of proof (i.e., the risk of nonpersuasion) from the party upon whom it was originally cast. If a presumption is not rebutted, the party with the burden of proof prevails on that issue by virtue of the presumption. If a presumption is rebutted, it is reduced to a permissible inference. The ALJ must then weigh the conflicting evidence to decide which is most persuasive.

Because a fact must be proved with substantial evidence, a rebuttable presumption must be met with substantial evidence. Therefore, an employer asserting that a workplace fall was idiopathic must meet the presumption with substantial evidence to that effect. If the employer does so, the ALJ must weigh the conflicting evidence, including the permissible inference

that a workplace fall arises out of the employment. The burden of persuasion remains on the worker.

Id. at 866-867.

In Jefferson County Public Schools, the employer produced substantial evidence to support the presumption regarding the aforementioned dizziness; therefore, the presumption was reduced to a permissible inference. Thus, the claimant retained the burden to prove the fall arose out of the employment. The ALJ found credible the claimant's testimony that she simply fell when stepping from the carpet to the smoother surface. Accordingly, the claimant's testimony along with the presumption constituted substantial evidence upon which to base the decision of work-relatedness.

Bell testified he had corneal implants approximately twenty years prior to the date of his fall. After undergoing a follow up from the surgeries, Bell had not received any further treatment of his eyes. As noted by the ALJ, Bell began taking blood pressure medication after the subject fall. Bell did not know why he passed out at work. In fact, he went to see Dr. Katherine Dunbar to find out why he passed out. She ran tests which provided no explanation. He denied being treated for any other chronic conditions or being prescribed medication until he took blood pressure medication following this incident. Bell denied ever being prescribed blood pressure medication prior to his April 2019 fall. Notably, there is no evidence linking potential blood pressure problems to the fall at work. Bell testified he passed out and such an episode had never happened before. Bell explained:

Q: What's the last thing you remember before you passed out?

A: Not feeling well at the moment, sweating. Like I said, I just got disoriented just all of a sudden. I've never had that experience before in my life. We was only going to get four coils ready. And then after we got two coils ready I started sweating and feeling bad and like I said after that I passed out. That's all I remember.

Q: When you got to work that day, were you feeling like your normal self?

A: Uh-huh.

Q: Is that yes?

A: Yes. I'm sorry.

Q: ... but are you telling me then that the symptoms that you had of feeling disoriented and getting a little sweaty, did those come on suddenly?

A: Yes.

The medical records of Baptist Health Louisville reflect the reason for the visit was "syncope" and Bell provided the following: "I got dizzy and sweaty today while at work and passed out hitting my head on the ground and busting my right eye." Under "Review of Systems," is the following: "Neurological: Positive for syncope. Negative for weakness, numbness and headaches." The final diagnosis was "Syncope and collapse. Ruptured globe or right eye, initial encounter." Baptist Health's records contain no explanation for how or why the alleged syncope occurred. Consequently, the cause of the alleged syncopal episode was and is unknown.

After having carefully considered the facts, the law, and arguments of counsel, we agree with Bell that the ALJ erroneously determined his fall was idiopathic and not work-related. Reynolds put forth no evidence supporting the theory that something personal to Bell caused his fall. Further, it submitted no

evidence Bell possessed some physical or medical condition that caused him to fall. Reynolds may have persuaded the ALJ that nothing it did caused the fall. That alone, however, does not shift the inference from a rebuttable presumption of work-relatedness to the permissible inference. As the Kentucky Supreme Court pointed out in Jefferson County Public Schools, *supra*:

It was the employer's burden to go forward with substantial evidence of a non-work-related cause for the claimant's fall in order to rebut the *Workman* presumption.

Id. at 867.

Even though the hospital records contain a diagnosis of syncope as the chief complaint, those records do not explain the cause of the syncope. The medical records and Bell's testimony do not link the workplace fall to a prior condition of Bell's. Thus, we believe the ALJ erroneously concluded the fact that there was a diagnosis of syncope caused the fall to be idiopathic. That is not the test. Rather, Reynolds must come forward with some explanation as to why the syncopal episode occurred. Applying that standard, Reynolds did not meet the above-described burden. The Court of Appeals (now Supreme Court) phrased it best in Workman:

In blunt terms this means that without such rebutting evidence the Board [now ALJ] cannot find against him on the issue of whether the accident arose out of the employment.

Id. at 900.

Unlike in Workman, Reynolds did not demonstrate the cause of the fall. In Workman, Wesley Manor introduced evidence that Workman had the following problems:

Prior to the time of the hip injury Mrs. Workman had suffered injuries to her back in two separate automobile accidents, one on February 14, 1964, and the other on November 3, 1965, following each of which she had brought suit against other parties for her damages. The second of these two damage suits was pending at the time she broke her hip, and on March 8, 1967, in that action, she testified in a deposition as follows.

Id. at 899.

The 1967 deposition in the damage suit was introduced as evidence against Workman during the course of the workers' compensation proceeding. The Board concluded Workman's fall was idiopathic due to her pre-existing back problems and dismissed her claim. The Court of Appeals (now Supreme Court) explained the importance of Workman's previous testimony in the personal injury action involving an injury to the same area of the back:

Mrs. Workman's testimony in this proceeding would have entitled her as a matter of law to a favorable finding had there been no rebutting or countervailing evidence on the issue of causation, but the subsequently introduced content of what she had said while testifying in the damage suit constituted enough evidence that the accident resulted solely from the weakened condition of her back, and not in any respect from the performance of her work, to reduce the rebuttable presumption in her favor to a permissible inference, leaving the board free either to decide in her favor or to remain unpersuaded, as it did, that her work was a causative factor in precipitating the injury. That being the case, the circuit court was correct in not disturbing the action of the board.

Id. at 901.

Our holding is also consistent with Vacuum Depositing, Inc. v. Dever, 285 S.W.3d 730, 733-734 (Ky. 2009), in which the Supreme Court stated as follows:

Kentucky has adopted a presumption that an unexplained workplace fall arises out of the employment

unless the employer presents substantial evidence to show otherwise. [footnote omitted] The employer cannot prevail in such a case unless it shows affirmatively that the fall was not work-related. The employer in *Workman* did so by showing that Ms. Workman's testimony in the workers' compensation claim conflicted with her testimony in an unrelated civil suit that her back had been symptomatic and caused her to fall before the incident at work. The court determined that the employer offered sufficient evidence that the fall was idiopathic to negate the presumption that it was not.

The court explained subsequently in *Turbyfill* that an idiopathic fall may be compensable if work places the injured worker in a position that increases its dangerous effects. [footnote omitted] *Turbyfill*'s employer negated the *Workman* presumption by showing that his fall resulted from a non-work-related heart attack. The court found the fall to be compensable, however, because the fact that he was working 12 feet off the ground increased the fall's effects.

...

To summarize, a work-related fall occurs if the worker slips, trips, or falls due to causes such as a substance or obstacle on the floor of the workplace or an irregularity in the floor. When the cause of a workplace fall is unexplained, the fall is presumed to be work-related under *Workman*. Unexplained falls divide ultimately into two categories: 1.) those the employer has shown to result from a personal or idiopathic **cause** but which may be compensable under the positional risk doctrine; and 2.) those that remain unexplained and entitled to a presumption of work-relatedness. **(emphasis added)**.

The claimant alleged an unexplained fall but, as in *Workman*, the ALJ found that the employer rebutted the presumption of work-relatedness and showed the fall to be personal or idiopathic. The employer asserts that the Board erred by substituting its judgment for the ALJ's and, thus, that the Court of Appeals erred by affirming the Board. We disagree.

In the case *sub judice*, the medical records reflect a diagnosis of syncope but do not show its cause or, more importantly, relate it to a non-work-related cause.

Thus, the employer as required by Dever did not show the fall resulted from personal or idiopathic cause. The following language from Dever is directly applicable to this case:

The ALJ characterized the claimant as “not an entirely credible witness” but determined that a workplace fall occurred although its cause was idiopathic. The fact that the claimant's work did nothing to cause her fall was immaterial under *Workman*. The record contained no evidence that she suffered from a **pre-existing disease or physical weakness that caused her to fall** and no evidence that she was engaged in conduct when she fell that would take the injury outside Chapter 342. Nor did the record contain evidence that her footwear was inherently dangerous and inappropriate for work in the employer's offices. Like the Board and the Court of Appeals, we are convinced that evidence the claimant was clumsy and wearing high heels was not sufficient to prove that the cause of her fall was idiopathic. The evidence did not overcome the presumption that the fall was unexplained and, thus, that it was work-related. **(emphasis added)**.

Id. at 734.

The record contains no evidence, as mandated by Dever, Bell suffered from a pre-existing disease or physical weakness causing his fall. There is no evidence he was predisposed to a syncopal episode when he fell, thereby removing the fall and injury from the work-related realm. In the case *sub judice*, there is no such evidence establishing, as mandated by Dever, that Bell suffered from a pre-existing disease or condition rendering him likely to suffer a syncopal episode resulting in a fall. That being the case, Bell's fall was unexplained.

Since Reynolds has not demonstrated Bell's fall was idiopathic, we reverse the ALJ's decision and remand for a finding that the fall was unexplained and the physical effects of the fall are compensable. Further, since there is no dispute

that before Bell fell on April 6, 2019, his eyes were functioning and the fall resulted in significant damage to Bell's right eye, the ALJ is required to find the injury to his right eye is compensable. Given the undisputed facts, medical evidence is not required to establish Bell sustained a significant work-related right eye injury as a result of his unexplained fall.

Accordingly, the February 7, 2020 Opinion and Order and the March 10, 2020 Order rendered by Hon. John McCracken, Administrative Law Judge, are hereby **REVERSED**. This claim is **REMANDED** for further proceedings and a decision in conformity with the views expressed in this Opinion.

ALL CONCUR.

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