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THE CURRENT STATE OF STAIRS: COMPENSABLE OR NOT?

As with most workers' compensation compensability issues in Minnesota, the answer is maybe. The Workers' Compensation Court of Appeals' recent decision in *Roller-Dick v. CentraCare Health System*, slip op. (WCCA October 19, 2017) has muddled the determination of compensability of "stair cases" in light of prior decisions from the Minnesota Supreme Court.

A previous Brown & Carlson Insight article addressed the case of *Kubis v. Community Memorial Hospital Assoc.*, 897 N.W.2d 294 (Minn. 2017), in which the Minnesota Supreme Court upheld the compensation judge's finding that the employee's injury did not arise out of her employment activities. In *Kubis*, the employee was injured when she fell while allegedly rushing up the stairs at work. While the Supreme Court focused most of its opinion on the scope of the WCCA's review on appeal, the underlying premise of the compensation judge's opinion (that this particular fall on stairs did not increase the risk of injury and was not compensable) was not disturbed by the Court.

The WCCA then subsequently ruled on *Roller-Dick*. In that case, the employee was going down an internal staircase at the end of her work day to leave the employer's premises. When she was close to the bottom of the stairs, the employee slipped and fell, breaking her ankle. The stairs had a rubber covering and there were handrails on both sides. However, the employee did not use the handrails as she was carrying a plant with both of her hands. The employee was wearing rubber soled shoes at the time and provided testimony that she felt the rubber on her shoes "caught" on the rubber on the stairs and this caused her to fall. Expert testimony was provided by the employer and insurer indicating that the stairs themselves were not defective in any way and were OSHA compliant. After the Hearing, the compensation judge found that the incident did not arise out of her employment and was, therefore, not compensable. The employee then appealed on the sole issue of whether the employee's injury arose out of her employment.

In its decision, the WCCA distinguished the Supreme Court's

prior decision in *Dykhoff v. Xcel Energy*, 840 N.W.2d 821 (Minn. 2013), in which the Supreme Court held that "[a] 'causal connection "is supplied if the employment exposes the employee to a hazard which originates on the premises as a part of the working environment, or ... peculiarly exposes the employee to an external hazard whereby he is subjected to a different and a greater risk than if he had been pursuing his ordinary personal affairs."' *Roller-Dick*, slip op. at *2 (citations omitted). It was based on this language that the compensation judge in *Roller-Dick* found that the employee's injury did not arise out of her employment as she failed to establish that the risk she faced by descending the stairs was greater than she faced in her everyday life. On appeal, the WCCA held that the compensation judge used an incorrect standard. *Id*.

The WCCA interpreted *Dykhoff* as to apply only to "neutral risk" cases. *Id*. at *3. The court held that a set of stairs in and of itself is not a "neutral risk." *Id*. The court stated "[i]f using stairs was a neutral risk, stairways would not have handrails for persons ascending and descending stairs." *Id*. As such, the WCCA felt the holding in *Dykhoff* did not apply to the facts of this case.

Rather, the WCCA determined that the applicable case to the current matter was actually *Kirchner v. County of Anoka*, 339 N.W.2d 908 (Minn. 1983). In *Kirchner*, the employee's injury occurred when he was traversing a staircase that had only one handrail and he fell as he was unable to make use of it. The WCCA felt that the facts in the present case were similar to *Kirchner* as the employee was unable to use either of the handrails given the fact she was holding onto a potted plant at the time she fell. The WCCA opined:

> In *Kirchner*, the causal connection was found without evidence of a condition, defect, or wrongdoing on the part of the employer. Ms. Roller-Dick suffered an injury while descending a flight of stairs on her employer's premises, she was not obligated under the law to show that there was something about the flight of stairs that increased her risk of injury because the stairs alone increased her risk, and therefore, that injury arose out of her employment.

Id.

The WCCA's decision in *Roller-Dick* is currently on appeal to the Minnesota Supreme Court. We will have to see how the Minnesota Supreme Court responds.

Where does the WCCA's holding in *Roller-Dick* leave an employer and insurer in terms of making compensability decisions when an injury occurs on the stairs? That is a difficult question to answer simply because the case is on appeal to the Minnesota Supreme Court and is technically unsettled law. If the Supreme Court simply affirms the WCCA's decision, employers

and insurers may be liable for any injury occurring on the stairs, regardless of the circumstances of the injury. There will no longer be a need to provide any expert testimony about the condition of the stairs, whether there were handrails, what the friction coefficient may have been on the stairs, etc., because the WCCA found "stairs alone increase risk."

However, if the Minnesota Supreme Court abides by the holding in *Kubis* where a very similar claim was denied, then employers and insurers will maintain the ability to defend such cases by obtaining expert testimony showing that the particular set of stairs was not an increased risk and did not contribute to the injury.

The question of compensability of cases involving injuries on stairs remains up in the air. But the Minnesota Supreme Court decisions in *Dykhoff*, *Kainz*, and *Kubis* still provide the ability to deny, based upon the increased risk test, for now.

If you have any questions regarding this or on other matters, please contact us.
