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Stairway to Compensability?
(With apologies to Led Zeppelin)

Under the Minnesota Workers' Compensation Act, in order for a claimed workplace injury to be compensable, it must be an injury "arising out of and in the course of employment." Minn. Stat. § 176.011, Subdivision 16. The "in the course of" requirement refers to the time, place and circumstances of the injury and, relatively speaking, is the subject of little dispute. In contrast, the "arising out of" requirement has been the topic of a good deal of litigation, both at the Workers' Compensation Court of Appeals and recently, somewhat surprisingly, at the Minnesota Supreme Court. A significant number of these appellate court decisions dealt with workplace injuries that occurred on stairways. The recent decisions can be described as inconsistent at best. The purpose of this article is to summarize the recent case law dealing with stairway injuries, and offer some thoughts on how to analyze your claims in light of these various incongruous rulings.

Historically, the "arising out of" test for compensability required a showing that the injury in question be the result of some hazard that increased the employee's risk of injury beyond that to which the general public was exposed. *Kirchner v. Anoka County*, 339 N.W.2d 908 (Minn. 1983). In that case, the employee was descending an internal stairway at the Anoka County Courthouse at the conclusion of his work day. The stairway had a railing on only one side. That side was occupied, so Kirchner did not have the benefit of the railing. His knee gave way and, because there was no handrail available, he fell down several steps and sustained injury. The compensation judge held that the "increased risk" test was satisfied. Subsequent appellate court decisions diluted the importance of this test.

Alternative tests suggested by the WCCA were the "positional risk" test which merely required that the employee demonstrate that his employer placed him in a position wherein he was injured, and the "workplace connection balancing" test whereby the courts would balance the relative strength of the "in the course of" and "arising out" tests to determine compensability. *Duchene v. Aqua City Irrigation*, 58 WCD 223 (1998); *Bohlin v. St. Louis County*, 61 WCD 69 (2000). However, in its 2013 decision in *Dykhoff v. Xcel Energy*, 840 N.W.2d 821 (Minn. 2013), the Minnesota Supreme Court clearly stated that the "increased risk" test is the appropriate test for determining whether an injury meets the "arising out of" requirement for compensability. It is against this backdrop that the recent state of stairway injury claims have emerged.

In *Arrowhead Senior Living Community v. Kainz*, 860 N.W.2d 379 (Minn. 2015), the employee fractured her ankle on a staircase at work. The sole issue was whether the injury arose out of the employment. The compensation judge awarded benefits and the Workers' Compensation Court of Appeals affirmed based upon its conclusion that there were no handrails on the portion of the stairway where the employee was injured, and upon the employee's testimony that the stairway was "kind of steep." The Minnesota Supreme Court reversed the WCCA and denied the claim, finding that the WCCA's decision was "manifestly contrary to the evidence." Photographs of the stairwell showed the handrails.

In *Kubis v. Community Memorial Hospital Association*, 897 N.W.2d 254 (June 28, 2017), the employee, a nurse, fell and sustained injury while ascending a staircase at the hospital where she was employed. The compensation judge denied the claim, finding that the employee had failed to prove that her injury arose out of her employment. The matter was appealed to the WCCA which determined that there was sufficient evidence that the employee was "hurrying" up the stairs at the time of her injury to support a claim of increased risk. The Minnesota Supreme Court reversed the Workers' Compensation Court of Appeals holding that it had exceeded its scope of review, and reinstated the denial of benefits by the compensation judge.

In the matter of *Roller-Dick v. CentraCare Health Systems*, slip op. (W.C.C.A. October 19, 2017), the employee was descending an internal stairway on the employer's premises at the end of the day when she slipped and fell to the bottom of the flight, fracturing her left ankle. The compensation judge denied the employee's claim, finding that the employee had failed to establish that the risk of injury on the employer's stairway was any greater than that which the employee would have faced in "everyday life." The WCCA rejected this conclusion stating that it was not the correct test. Rather, the Appellate Court concluded that a "flight of stairs alone increases the risk of injury." Therefore, once the employee established that she had fallen on a flight of stairs, no further proof of an increased risk was required. This decision is currently on appeal to the Minnesota Supreme Court.

In the matter of *Lein v. Eventide*, slip op. (W.C.C.A. December 29, 2017), the employee fell while descending a flight of stairs on the employer's premises and sustained injury. Evidence was submitted to the compensation judge by both sides as to the condition of the stairway, and whether there was any "defect" in the stairs. The compensation judge determined that the employee had failed to demonstrate any such defect and therefore denied the claim holding that the employee had failed to demonstrate a hazard as would give rise to an increased risk of injury.

On appeal, the Workers' Compensation Court of Appeals reversed the compensation judge holding, consistent with *Roller-Dick*, the employee was in the course of her employment when she fell and, because she fell on a stairway, the injury arose out of her employment and the claim was compensable.

Where does this leave us with stairway claims? Prior to the *Roller-Dick* decision, the stairway cases invariably focused upon the presence or absence of some hazardous condition or activity associated with a stairway which resulted in injury. In *Kirchner*, compensability was based upon the lack of a hand railing to prevent the employee's fall. In *Kainz*, the analysis focused upon whether there was a handrail, and whether the staircase in question was particularly steep. In *Kubis*, the analysis centered upon whether the employee was hurrying up the stairs at the time of her injury. In each of these cases, the employee was injured on a stairway and in each of these cases the claim was ultimately denied as failing to meet the increased risk test.

The recent holdings by the WCCA that a stairway in and of itself constitutes a "hazard" therefore represents a significant change in the landscape of stairway cases. It has not yet been addressed by the Supreme Court. Accordingly, I suggest the following:

- Notwithstanding *Roller-Dick*, there are still legal grounds for denying a claimed stairway injury in the absence of any proof of a defect or hazardous condition in the stairway (i.e., lack of a handrail, slippery stair surface, etc.). *Kainz* and *Kubis et. al.* have not been overturned. The Supreme Court has not yet addressed that theory that stairs are inherently hazardous.

- If your denied stairway claim goes to trial and is denied by the compensation judge, there is a virtual certainty that it will be appealed to the WCCA and that they will reverse the denial per *Roller-Dick*. You should therefore be prepared to take the matter to the Supreme Court in order for your denial to be sustained. Stay tuned for further developments.

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