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Case Law Update: Denial Of Idiopathic Conditions In Florida Workers' Compensation Claims

BACKGROUND

Florida's First District Court of Appeal ("DCA") recently issued two opinions that further define the statutory requirement that an injury "arise out of" employment in order to be compensable. These two opinions, *Silberg v. Palm Beach County School Board,* 1D20-75 (Fla. 1st DCA Feb. 16, 2022), and *Soya v. Health First, Inc.,* No. 1D21-59 (Fla. 1st DCA Feb. 21, 2022) take a deep dive into the history of the "arising out of" defense and the compensability of idiopathic conditions. The following Litchfield Alert summarizes recent legal opinions to guide future compensability determinations by analyzing when factors other than the workplace environment are sufficiently contributory to the cause of the accident to support a denial.

DETAILS

In *Silberg*, a school teacher had been sitting in his usual desk chair for approximately five minutes when his leg "fell asleep." When he stood and attempted to take a step, his leg didn't move, causing him to fall and break his leg. The two doctors that evaluated him agreed that the numbness/paralysis that he felt in his leg was caused by a compression of his vasculature or nerve while he was sitting. The Judge of Compensation Claims denied compensability finding that the idiopathic condition was a "personal risk" and the employee failed to establish the accident arose from an "increased hazard" created by his employment.

The District Courts of Appeal (DCA) agreed with the JCC finding that the evidence supported the finding that sitting/standing was a personal risk that contributed to the fall and resulting injury. Therefore, the JCC had used the correct "increased hazard" test in the causation analysis. The DCA also agreed there was sufficient evidence to support the JCC's conclusion that the personal risk was the major contributing cause of the fall over the work related actions. The DCA also reviewed the definition of "personal risk" and its application to the requirement that an accident must "arise from" employment.

The Court explained that a personal risk is one that an employee is equally exposed to in his non-employment and his employment life. Further, a personal risk must be a physiological condition. This definition refreshed a topic that sees very little attention as it is a universally accepted principal—that Florida workers' compensation system is a no-fault system. Thus, the employee's non-physiological characteristics, like clumsiness or carelessness, can never be defenses.

When there is no dispute that an accident occurred within the course and scope of employment and there is only one cause of the accident, the Court held that the correct causation analysis to determine if the accident "arose out of" the employment is the "any exertion" test. Under this analysis, if there was any exertion by the employee in furtherance of employment duties, causation is satisfied. The *Silberg* Court generously clarified that merely standing still or sitting can qualify as any exertion if such is required for the performance of duties. The *Soya* opinion reiterates that the "any exertion" test does not have a minimum "quality or quantity" of work to satisfy the test, only whether the activity was related to the employment.

On the other hand, when there are multiple causes, at least one of which is a "personal risk," the correct causation analysis to determine whether the accident "arose out of" the employment is the "increased hazard" test. Under this analysis, the court must consider whether the employment environment increased the risk of the accident occurring or increased the risk of aggravating a personal condition. Specifically, the DCA stated:

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> "The movement, when considered in the context of the triggered idiopathic condition, would be just a daily exertion that the employee could have been doing anywhere. In that case, it is the idiopathy that is the greater cause of the accident or injury. The "increased hazard" test, then, helps by ensuring that the work activity stands out as distinguishable from everyday activity and as peculiarly work, before work can be said to be the greater cause of the accident…".

Thus, to overcome a denial of compensability, the employee would need to show his exertion for work was "more or different than what he ordinarily would encounter in his non-work life."

In *Soya*, the DCA again considered questions of "personal risk" and "increased hazard" but at this time reversed the JCC's denial of compensability, finding that the JCC had incorrectly applied the "increased hazard" test. In *Soya*, the injured worker was ending her shift but had not yet clocked out. As she was walking to an employee locker room before leaving, she fell into the locker room door causing an injury. There was no identifiable cause for her fall. In fact, the Employer/Carrier hired an engineering expert to inspect the location of the fall and concluded there was nothing specific about the floor that contributed to the cause of the fall—it was a level, well-maintained, non-slip surface.

In denying compensability, the JCC reasoned this tripping accident "could have happened anywhere" since there was no clear connection to the employment. In other words, the floor did not create an "increase hazard". However, the DCA disagreed and indicated the JCC had improperly switched to the increased hazard test despite the lack of any evidence of a "personal risk" which contributed to the cause of the accident. Instead, DCA reversed the decision and instructed the JCC to apply the "any exertion" test.

While the *Silberg* opinion explained the "increased hazard" test is intended to exclude liability for injuries that "fortuitously" occurred at work, but could have happened anywhere, the *Soya* opinion narrowed this language, adding that this "could have happened anywhere" argument does **not** apply if there was not a "personal risk" that contributed to the cause of the accident. The Judge may only consider the "fortuitous" nature of the accident when a personal risk dominates over a very ordinary action taken during the performance of work duties.

A poignant example, discussed in *Silberg*, was the case of a construction worker who simply looked up toward a roof, causing a herniated vertebrae in his neck to become painful. The Court viewed this as a merely "fortuitous" injury, because the "mundane" act of looking up was no more likely to happen at work than elsewhere. Therefore, the work performance did not expose him to an increased hazard greater than he would experience elsewhere. The major contributing cause of the injury was the pre-existing herniation, not the work.

Ultimately, the core principle of law to take away from *Silberg* and *Soya* is:

> "When a "personal risk" (i.e. an idiopathic condition) contributes to the cause of an accident, the employee has the burden to satisfy the 'increased hazard' test in order for the accident to "arise from" their employment."

The *Silberg* Court also examined the hotly debated question of whether the 2019 opinion in *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133, 1136 (Fla. 1st DCA 2019) (en banc), had overruled or superseded their earlier 2012 opinion in *Caputo v. ABC Fine Wine & Spirits*, 93 So. 3d 1097 (Fla. 1st DCA 2012). The Court's opinion was unequivocally "No". The Court explained that these two cases apply two totally different analyses.

In *Caputo*, the employee fell off the stool he was standing on. Since there was no clear cause, as in *Soya*, only the "any exertion" test applied. However, in *Valcourt-Williams*, an employee working from home was walking to get a cup of coffee and she tripped over her dog. Unlike *Caputo*, the DCA noted that two apparent causes contributed to the trip-and-fall—the walking (work-related), and the employee's dog (non-work-related). Thus, the correct analysis was the "increased hazard" test to determine which aspect was the major contributing cause of the fall. The Court noted that the "any exertion" test and

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"increased hazard" tests will never apply to the same set of facts. Therefore, the principles and conclusions of *Caputo* and *Valcourt-Williams* are not in conflict and they will never compete with each other.

However, the *Silberg* opinion goes further and emphatically explained that the *Valcourt-Williams* decision is a "very narrow" and only applies to the context of an accident occurring during a comfort break. It clarifies that *Valcourt-Williams* merely represents that injured workers have a heightened burden of proof for these comfort break accidents; that in that specific factual scenario the correct analysis is the "increase hazard" test rather than the "any exertion" test. It reasons this application is correct because most activities during a comfort break are inherently personal and the increase hazard test accounts for that fact.

SUMMARY

These new opinions reveal that every individual employee takes unique personal risks into the workplace and personal risks that can lead to compensability denials need not be catastrophic pre-existing injuries. In fact, they need not be diagnosed or treated conditions. Nor do they need to be permanent, daily, or recurring issues.

Here, the qualifying personal risk of Mr. Silberg was a momentary cardiovascular malfunctions. This seemingly implies that personal risks could be as common and unassuming as obesity, or as fleeting as lightheadedness upon standing caused by dehydration. For future workers' compensation defense, this means that idiopathic conditions will become easier to use as a basis to defend the claim.

In order to capitalize on this change, an Employer/Carrier should evaluate and tailor the claim intake process. When there is an accident without an obvious direct cause (e.g. tripping, but not over an object) it should immediately trigger a critical analysis of personal risks. This is a comprehensive questioning of the employee's medical history, regardless of how attenuated it may seem. Asking more open ended questions to perhaps identify physiological abnormalities, such as what prescription medications they take or are prescribed but not taking, or even temporary physiological changes, such as whether their accident was preceded by normal sleeping, eating, hydration, and/or exercise habits, etc. Ideally, this type of questioning would be recorded in some fashion, either an audio recording or written (by or for the employee) and sign by the employee attesting it is accurate.

David Gold concentrates his practice exclusively on workers' compensation defense and subrogation. He has extensive experience defending all manner of cases—from routine injuries to complex matters to claims for permanent total disability. David has defended employers, insurance carriers, self-insured corporations, third-party administrators and claims servicing agencies throughout Florida. David is an appointed faculty member for the School of Workers' Compensation at the prestigious Claims College where he is a frequent lecturer on matters regarding workers' compensation, and also is accredited by the Florida Department of Insurance to provide CEU.

Lynne Wilkerson focuses her practice on defending employers and insurance carriers against workers' compensation claims, as well as Florida appellate practice. Prior to joining Litchfield Cavo LLP, Lynne worked as a public defender at the Twentieth Judicial Circuit of Florida, affording her extensive litigation experience.