From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

QUESTION: Can an injury arising from a syncopal episode while the claimant is driving to a job be said to "arise from" employment?

To be eligible for workers' compensation benefits, a claimant must prove that an injury occurred both "in the course of" employment and "arising from" her employment. *Ruckman v Cubby Drilling, Inc.*, 81 Ohio St. 3d 117 (1998). The former refers to time and place, while the latter references a "causal connection" between the injury and the claimant's job responsibilities. *Id*. However, when injuries arise from "idiopathic" (loosely defined as "peculiar to an individual") causes, the claim does not "arise from" employment. Recently, the Eighth District Court of Appeals considered a case involving a woman who was injured after losing consciousness while driving, and whether the resulting injury "arose from" her employment.

Miller v Horizon's Health Servs. LLC, 2017-Ohio-465, involved a visiting nurse who travelled to see her patients by car. While driving to see a client, she lost consciousness at a stoplight and crashed into a light pole, fracturing her leg. Medical staff at the emergency room attributed the accident to a "syncopal" episode, or an unexpected and temporary loss of consciousness, attributable to the claimant's failure to take her blood pressure medication. A workers' compensation claim was filed, which was contested by the employer, who claimed that while the claimant was working at the time of the accident, her injuries did not "arise out of" her employment because her loss of consciousness was idiopathic and related to her health conditions. The claimant argued that she was "on the clock" at the time of the accident and required to drive, which constituted a dangerous activity which led to her injury. The claim was denied at every level of the administrative process, causing the claimant to file an appeal to the Cuyahoga County Common Pleas Court. The trial court ultimately granted the employer's motion for summary judgment, finding that the claimant failed to meet her burden of eliminating idiopathic causes of her injuries. The claimant filed an appeal as of right to the Eighth District.

The Eighth District affirmed, concluding that the claimant failed to produce evidence supporting a non-idiopathic cause, or that a condition of her employment contributed to her injuries. While the claimant argued that *Indus. Comm. v Nelson*, 127 Ohio St. 41 (1933), controlled, the Court concluded that *Nelson*, which involved an employee who suffered an epileptic seizure and struck his head on a welding machine, was distinguishable because the presence of the machine constituted an added risk. In the case at bar, the light pole the claimant struck was entirely unrelated to her employment and thus is not a "condition attendant" to her employment, and there was also no allegation that the roadway was unsafe. The Court found that Miller was similar to *Stanfield v Indus. Comm.*, 146 Ohio St. 583, where a court found that an injury that occurred when a claimant fell and struck his head on a restroom floor was not compensable, as the floor provided no additional risk. Because the claimant's injuries arose from idiopathic causes, they did not "arise out of" her employment.

One can understand the claimant's argument that, but for her job, she would not have been driving. However, Miller reflects the modern view that injuries arising from "idiopathic" causes will face greater scrutiny, although they are considered on a case-to-case basis.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers' compensation issues, please feel free to contact me.

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