CASE NO. 6524 CRB-8-23-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 800214960

EILEEN POST : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : SEPTEMBER 6, 2024

RAYTHEON TECHNOLOGIES/PRATT & WHITNEY
EMPLOYER

and

LIBERTY MUTUAL INSURANCE GROUP
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Mark Merrow, Esq., Law Offices of Mark Merrow, L.L.C., 760 Saybrook Road, Middletown, CT 06457.

The respondents were represented by Jason M. Dodge, Esq., Strunk, Dodge, Aiken & Zovas, 200 Corporate Place, Suite 100, Rocky Hill, CT 06067.

This Petition for Review from the December 7, 2023 Finding and Dismissal of Peter C. Mlynarczyk, Administrative Law Judge acting for the Eighth District, was heard on May 31, 2024 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Zachary M. Delaney and Daniel E. Dilzer.[1]

[1] We note that one motion for extension of time was granted during the pendency of this appeal.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant has petitioned for review from the December 7, 2023 Finding and Dismissal of Peter C. Mlynarczyk, Administrative Law Judge acting for the Eighth District (finding). We find no error and accordingly affirm the decision.

The administrative law judge identified as the issue for determination whether the claimant sustained a compensable injury to her left lower extremity on February 14, 2022. At trial, the claimant testified to the following: she was hired by Pratt & Whitney, now Raytheon Technologies, on October 1, 1979. She experienced prior medical issues with the left lower extremity; in 1995, she was diagnosed with a tumor in her left hip and underwent total hip replacement surgery in 1996. She subsequently had six surgeries, the last of which was performed in 2017 by Eric A. Silverstein, an orthopedic surgeon.

Approximately fifteen years ago, one of the surgeries resulted in nerve damage and a "drop foot"; as a result of this condition, the claimant was prescribed a leg brace.[2] However, prior to 2017, the brace she was using was so uncomfortable that she rarely wore it. At trial, the claimant acknowledged under cross-examination that on May 7, 2020, she told Silverstein she "does not use [any] ambulatory assist devices and does not wear an AFO [ankle foot orthosis] for her chronic foot drop (says it is uncomfortable)." Claimant's Exhibit C; see also July 20, 2023 Transcript, p. 34.

[2] At a deposition held on April 21, 2023, Raymond Sullivan, an orthopedic surgeon, explained that foot drop is caused when muscles of the foot are unable to lift the foot due to a nerve or tendon issue, causing the foot to continually go down.

In 2017, Silverstein prescribed a different type of brace which the claimant wears most of the time, although not when she is at home. The brace fits inside her shoe, is secured around her ankle, and extends the length of her foot. The brace prevents her foot from tipping over, which would cause her to trip. The claimant testified that when she is not wearing the brace, she is susceptible to falling, but that she has been wearing the brace for many years and it has never caused her to slip. She generally puts on the brace when she is getting dressed for work. The claimant admitted that prior to falling on February 14, 2022, she did not use a cane or a crutch but did walk with a limp; since the incident, she uses a crutch or a cane if she has to walk long distances.

In January 2022, the claimant, while leaving a restaurant after dark, fell when her right foot got caught in a crack in the pavement.[3] Although she was not using a crutch or a cane at the time, she testified that she was certain she was wearing her foot brace. The following day, she sought treatment for a dislocated shoulder from her primary care physician, who referred her to Jon C. Driscoll, an orthopedic surgeon. Driscoll relocated the claimant's shoulder and gave her a sling to wear for a few weeks. The claimant testified that when she fell on February 14, 2022, she was carrying the shoulder sling in her bag.

On February 10, 2022, the claimant was involved in a motor vehicle accident but did not sustain any injuries. On February 14, 2022, the claimant drove to work and parked in a special area close to the building. Although there was no snow or ice on the ground, the walkway had been treated with a large quantity of rock salt. The claimant

[3] The administrative law judge noted that at a deposition held on August 11, 2022, the claimant did not mention getting her foot caught in a crack in the pavement but, rather, testified that she fell either on or over something in the restaurant parking lot. See Respondents' Exhibit 8 [Exhibit 6, p. 20]; see also July 7, 2023 Transcript, p. 39.

"clocked in" after entering the building and was walking towards her department when suddenly, "her left foot slipped and then her heel got traction. Her knee hyperextended, she heard a pop, and then fell to the ground, first onto her right side and then over to the left." Findings, ¶ 1.i. At that time, in addition to her foot brace, she was wearing safety glasses, a coat, pants, and safety shoes provided by the employer which had large grooves in the sole. She was carrying a cup of coffee in her left hand and her bag in her right hand.

The claimant does not know what caused her to slip, although, when the incident occurred, she assumed that a piece of rock salt had become embedded in the sole of her shoe given the large quantity of rock salt on the walkway outside the building. She also testified that she saw a puddle of water approximately two inches in diameter on the floor near the place where she fell. She stated that "[w]hen she reported the mechanism of injury to her medical providers ... she was making an assumption that it was rock salt." Findings, ¶ 1.dd, *citing* July 20, 2023 Transcript, pp. 50-55. However, under cross-examination at trial, she testified that although she had seen a large quantity of rock salt when she entered the building, she did not see any once she was inside; she also stated that she was "not sure what [she] fell on." July 20, 2023 Transcript, p. 47. She further testified that she had not mentioned to her medical providers the possibility that there had been a puddle of water on the floor.

There were no witnesses to the fall; afterwards, the claimant lay on the ground for a few minutes and then got up and walked to her workstation. She reported the incident to her acting supervisor, Brandon Urzua, who sent her to the employer's medical department. The occupational health nurse elevated the claimant's leg and applied ice

packs. After she returned to her workstation, Urzua, her manager, Kevin Zombie, and two union representatives examined her shoes and accompanied her to the place where she had fallen. Neither water nor rock salt were present. The claimant testified that she had no idea whether anyone had altered the site in any way, such as wiping the floor, between the time the incident occurred, at approximately 6:00 a.m., and the time she returned to the site, at approximately 10:00 a.m.

On February 28, 2022, the claimant presented to Middlesex Health Occupational & Environmental Medicine and was sent for physical therapy. She was not taken out of work. As the condition of her leg appeared to be worsening with physical therapy, she returned to the occupational health doctor, who sent her for an x-ray which demonstrated that she had fractured her tibia. She again was not taken out of work, but was referred back to Driscoll, whom she saw on March 23, 2022. Driscoll immediately took her out of work, advised her to avoid putting weight on the leg, and gave her a full leg brace and crutches. She eventually underwent another course of physical therapy, and Driscoll released her to work on July 11, 2022.

The claimant is seeking temporary total disability benefits for the time period commencing on March 24, 2022, and continuing through July 10, 2022. She testified that although she retired on April 30, 2023, and has moved to Florida, she still considers Driscoll her treating physician and last saw him on April 7, 2023.

Jeffrey Thompson, currently the Associate Director of Facilities and Services at the employer's facility in West Palm Beach, Florida, also testified at trial, indicating that as of the date of the claimant's fall, he held the same position and title at the facility in Middletown, Connecticut, where the incident happened. He has worked for the employer

for thirty-seven years and his responsibilities while employed at the Middletown facility were "to oversee the entire campus for snow removal, the facility infrastructure, electrical, lighting, grounds, plumbing, you name it." Id., 58. A few weeks before the incident on February 14, 2022, he saw the claimant walking into the facility and "honestly felt bad for her" because "[s]he was having so much difficulty ...." Id., 61.

Thompson testified that after the claimant fell, the location where she had fallen was measured and determined to be 640 feet from the building entrance she had used. The designated walkway where she fell was very well-lit; on February 14, 2022, when Thompson, along with a colleague involved in plant safety, inspected the location of the incident, he did not see rock salt, water, or anything else which might have been responsible for the fall. He did encounter a union steward and asked him if he had seen anything on the floor. The steward replied that he had picked something up and thrown it in the garbage; however, Thompson did not believe what the steward told him as "it was said in a sarcastic and cynical way." Findings, ¶ 2.e, *citing* July 20, 2023 Transcript, p. 70.

At a deposition held on April 21, 2023, Raymond Sullivan, an orthopedic surgeon, described the effects of foot drop as follows: "So ... their gait is what's called a foot flap or steppage where they have to lift ... the foot way over and then they flop down. And they can actually hear it because their ankle is weak bringing it up, so they can't bring their leg forward." Respondents' Exhibit 8, pp. 7-8. Sullivan stated that foot drop "can cause a person to fall." Id., 8. Sullivan further explained that foot drop is "[i]nitially ... treated with a brace called an ankle foot [orthosis]," after which the cause of the foot drop must be determined to ascertain whether the condition can be fixed. Id.

Sullivan reviewed Silverstein's May 7, 2020 report referencing the claimant's history of multiple hip surgeries as well as Silverstein's comment that the claimant did not wear the AFO brace because it felt uncomfortable. In addition, he reviewed Driscoll's January 24, 2022 medical report discussing the claimant's fall at the restaurant, and noted that the fall was consistent with foot drop. He explained that if someone has left foot drop and stubs their right foot or toe, they are more likely to fall than someone who does not have foot drop because they "would automatically reach out with their left leg. And if their left leg is compromised with regard to height, motion or balance, or all three, then that would predispose them to falling." Id., 27. He testified that he was not surprised the claimant had fallen outside the restaurant on January 23, 2022, "[b]ecause many people with foot drop fall multiple times." Id.

Sullivan opined that the claimant's foot drop was a substantial contributing factor to the February 14, 2022 workplace fall. He testified that when the claimant was not wearing the brace, "she would walk with a significant limp and a foot drop which she would easily trip over." Id., 19. However, given the "leg length discrepancy that she has, according to Dr. Silverstein, she would automatically walk with a significant limp and have impaired balance even with the brace." Id. Sullivan indicated that, in his opinion, the claimant's February 14, 2022 incident was "entirely consistent with that diagnosis of left foot drop," id., 21, and this opinion was predicated on the facts that the claimant "had the preexisting foot drop, and that she either uses the brace or doesn't use the brace. And that she had a fall less than a month prior." Id., 22. Although Sullivan conceded that either a piece of rock salt caught in the claimant's shoe or a puddle of water on the floor might have increased the claimant's risk of falling, he testified that he would still believe

the patient's left foot drop was a substantial factor in causing the February 14, 2022 fall "even if there was water on the floor, even if there was rock salt in the tread of her shoe ...." Id., 31.

On the basis of the foregoing, the administrative law judge found persuasive Sullivan's opinion that the claimant's left foot drop was a substantial contributing factor to the February 14, 2022 workplace incident. He concluded that the record contained no credible or persuasive evidence that there was rock salt on the sole of the claimant's shoe when she fell, and the claimant's testimony regarding the presence of rock salt was "purely an assumption on her part." Conclusion, ¶ B. In addition, he determined that the record contained no credible or persuasive evidence that the claimant had slipped on water or that there was water on the floor when she fell. Although the claimant indicated that she thought she had seen a small puddle of water near where she fell, she did not testify that she had stepped in it. Moreover, when the location of the fall was inspected later that morning, no rock salt or water was present. The trier also deemed the union steward's comments unreliable hearsay.

The trier concluded that neither rock salt nor water on the floor constituted substantial contributing factors to the claimant's fall; rather, the incident "was caused solely by her foot drop condition."[4] Order, ¶ ii. Having determined there was "no causal nexus between her employment and the fall," Order, ¶ i, the trier denied and dismissed in its entirety the claim for compensability of the injury to the claimant's left lower extremity.

[4] The claimant has not challenged the factual findings relative to the lack of rock salt or water on the floor where she fell.

The claimant filed a motion to correct consisting of twelve proposed corrections, of which the trier granted one, and this appeal followed.[5] On appeal, the claimant contends that the language utilized by the administrative law judge relative to his conclusions as to causation "leaves it unclear on what grounds the trial judge made his determination on compensability." Appellant's Brief, p. 4. In addition, the claimant argues that the inferences reached by the administrative law judge were not supported by the evidence. The claimant also asserts that the trier's denial of the balance of the motion to correct constituted error.

We begin our analysis of this matter with a recitation of the well-settled standard of review we are obliged to apply to the findings and legal conclusions of an administrative law judge. A trier's "factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [trier] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court."

[5] In his December 7, 2023 Finding and Dismissal, the administrative law judge concluded: "Dr. Sullivan's testimony is persuasive that the claimant's left foot drop was a substantial factor in causing the claimant's fall on February 14, 2022." Conclusion, ¶ A. The trial judge granted the claimant's proposed correction requesting that the reference to "substantial factor" be changed to "substantial contributing factor."

Fair v. People's Savings Bank, supra, 540, *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

In reviewing this matter, we note at the outset that the "traditional concepts of proximate cause furnish the appropriate analysis for determining causation in workers' compensation cases," Dixon v. United Illuminating Co., 57 Conn. App. 51, 60 (2000), and "the test for determining whether particular conduct is a proximate cause of an injury [is] whether it was a substantial factor in producing the result." (Internal quotation marks omitted.) Paternostro v. Arborio Corp., 56 Conn. App. 215, 222 (1999), *cert. denied*, 252 Conn. 928 (2000), *quoting* Hines v. Davis, 53 Conn. App. 836, 839 (1999). Thus, the injury "must be the result of the employment and flow from it as the inducing proximate cause. The rational mind must be able to trace [the] resultant personal injury to a proximate cause set in motion by the employment and not by some other agency, or there can be no recovery." (Internal quotation marks omitted.) Fair v. People's Savings Bank, supra, 207 Conn. 545-46.

Moreover, in order to establish the requisite causal connection between the employment and the injury, a claimant "must demonstrate that the claimed injury (1) arose out of the employment, and (2) in the course of the employment."[6] Sapko v. State, 305 Conn. 360, 371 (2012), *quoting* Daubert v. Naugatuck, 267 Conn. 583, 589 (2004). Our Supreme Court has explained that "[t]here must be a conjunction of the two requirements, 'in the course of the employment' and 'out of the employment,' to permit

[6] General Statutes § 31-275 (1) states in relevant part that: "'[a]rising out of and in the course of his employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer…."

compensation. The former relates to the time, place and circumstance of the accident, while the latter refers to the origin and cause of the accident." Stakonis v. United Advertising Corporation, 110 Conn. 384, 389 (1930).

"An injury is said to arise out of the employment when (a) it occurs in the course of the employment and (b) is the result of a risk involved in the employment or incident to it or to the conditions under which it is required to be performed." (Internal quotation marks omitted.) Clements v. Aramark Corp., 339 Conn. 402, 411–12 (2021), *quoting* Labadie v. Norwalk Rehabilitation Services, Inc., 274 Conn. 219, 228 (2005). In order to come within the course of the employment, an injury must occur "(a) within the period of the employment, (b) at a place where the employee may reasonably be, and (c) while he is reasonably fulfilling the duties of the employment or doing something incidental to it." Stakonis v. United Advertising Corporation, supra, 110 Conn. 389.

In the present matter, the claimant contends that she "clearly demonstrated that the injury was incidental to employment and, therefore arose out of employment." Appellant's Brief, p. 4. As such, she contends that the language used by the trier in concluding that "there [was] no causal nexus between her employment and her fall," Order, ¶ i, as well as the conclusion that the fall "was caused solely by her foot drop condition," Order, ¶ ii, "leaves it unclear on what grounds the trial judge made his determination on compensability." Id. The claimant also contends that the trier erred in failing to articulate "whether the foot drop condition was sufficient to characterize the fall as an idiopathic fall ...," Appellant's Brief, p. 4, and further argues that because "the condition of foot drop can only contribute to a fall when a person is walking, it cannot be

the sole cause of a fall. Therefore, it does not provide a proper basis to classify the fall as an idiopathic fall."[7] Id.

The claimant acknowledges that our Supreme Court's analysis in Clements provides the appropriate framework for assessing the merits of this matter. In Clements, the court reviewed an appeal brought by a claimant who sustained injuries in a fall which occurred after she "suffered a syncopal episode at her place of employment, which caused her to lose consciousness, fall backward and strike her head on the ground." (Footnote omitted.) Clements v. Aramark Corp., supra, 339 Conn. 404-5. The commissioner dismissed the claim on the basis that the fall had been caused by "a personal medical infirmity unrelated to her employment."[8] Id., 405. This board affirmed the dismissal, but our decision was subsequently reversed by our Appellate Court, which held that "injuries sustained by an employee as a result of an idiopathic fall onto a level surface are compensable as a matter of law, as long as the fall occurred in the course of the employment ...."[9] Id., *citing* Clements v. Aramark Corp., 182 Conn. App. 224, 231-37 (2018).

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[7] Although in medical terminology the use of the word "idiopathic" generally "means 'designating or of a disease whose cause is unknown or uncertain,' ... or 'arising spontaneously or from an obscure or unknown cause' ... the court in Clements adopted the usage of 'idiopathic' to describe a fall caused by an employee's identifiable personal infirmity." (Internal citations omitted). R. Carter et al., 19 Connecticut Practice Series: Workers' Compensation Law (2023-2024 Supplement) § 1:6, p. 17.

[8] Effective October 1, 2021, the Connecticut Legislature directed that the phrase "Administrative Law Judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

[9] In so doing, our Appellate Court relied upon Savage v. St. Aeden's Church, 122 Conn. 343 (1937), wherein the commissioner awarded benefits to the survivors of a decedent who was found fatally injured at his worksite after having "apparently fallen backward on the concrete floor and fractured his skull." Id., 345. The Savage court affirmed the finding "that the proximate cause of decedent's injury was the fracture of his skull on the concrete floor which resulted from his fall," id., 346, and rejected the respondents' argument that the cause of the fall was unknown. The court ultimately concluded that "[a]n injury which occurs in the course of the employment ordinarily arises out of the employment, because the fact that the employee is in the course of his employment is the very thing which subjects him to the risks which are incident to the employment." Id., 347-48, *citing* Reeves v. Dady Corporation, 95 Conn. 627, 631 (1921).

In reversing the decision of the Appellate Court, our Supreme Court explained that an injury resulting from an unexplained fall "arises out of the employment if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed [the employee] in the position where [the employee] was injured." (Emphasis in original; internal quotation marks omitted). Id., 420, *quoting* Circle K Store No. 1131 v. Industrial Commission, 165 Ariz. 91, 96 (1990). The court differentiated an unexplained fall from an idiopathic fall, defining the latter as one which:

> is brought on by a purely personal condition unrelated to the employment, such as heart attack or seizure. ... Idiopathic [falls] are generally noncompensable absent evidence the workplace contributed to the severity of the injury. ... The idiopathic fall doctrine is based on the notion that an idiopathic injury does not stem from an accident, but is brought on by a condition particular to the employee that could have manifested itself anywhere. (Citations omitted; internal quotation marks omitted.)

Id., *quoting* Barnes v. Charter 1 Realty, 411 S.C. 391, 396 (2015).

In making this comparison, the court further noted that our "case law generally distinguishes between two types of idiopathic falls, namely, those that result in injuries unrelated to workplace conditions, and those in which workplace conditions contribute to the harm by increasing the risk of resultant injuries." Id., 421. The court ultimately held that:

> if an employee is injured from a fall onto a level floor caused by a personal medical infirmity unrelated to the employment, and the conditions of that employment did not increase the risk or severity of the injuries, so that the fall would have occurred in the same manner and with a similar result if it had occurred outside of the employment, the causal relationship between the employment and the injury is insufficient to support a finding that the latter arose out of the former. In other words, in such circumstances, although

> the floor is a "but for" cause of the employee's injuries, it is not a *proximate* cause of those injuries.[10] (Emphasis in the original.)

Id., 425–26.

In the present matter, the claimant contends that the factual circumstances surrounding her injury are such that the fall she sustained can be distinguished from the idiopathic fall sustained by the claimant in Clements. In furtherance of this argument, she points out that in Clements, the court discussed the role of the rebuttable presumption relative to compensability and made the following observation:

> Consistent with the liberality with which the act is to be construed, this court held more than one century ago ... that, when an employee is injured at a place where her duties required her to be, or where she might properly have been while performing those duties, there is a presumption, albeit a rebuttable one, that the injury occurred during the course of her employment and arose out of it.[11] (Footnote omitted; internal citation omitted.)

Id., 417, *quoting* Saunders v. New England Collapsible Tube Co., 95 Conn. 40, 43 (1920).

The claimant also asserts that "the respondent has conceded that the injury arose in the course of employment. Therefore, the claimant [satisfied] the burden of establishing a rebuttable presumption by demonstrating that the injury arose out of the employment." Appellant's Brief, p. 5. We disagree; although the respondents have conceded that the claimant's injury occurred in the course of her employment, they specifically "contend that the claimant's leg injury did not arise out of the claimant's

[10] The court stated that "although Savage dictated the Appellate Court's conclusion that the plaintiff was entitled to compensation, we now disavow Savage insofar as we determined in that case that injuries resulting from ... [an idiopathic] fall arise out of the employment as a matter of law." Clements v. Aramark Corp., 339 Conn. 402, 410 (2021).

[11] The court explained that "[a] rebuttable presumption is equivalent to prima facie proof of a fact and can be rebutted only by the opposing party's production of sufficient and persuasive contradictory evidence that disproves the fact that is the subject of the presumption." (Internal quotation marks omitted.) Fish v. Fish, 285 Conn. 24, 46 n.21 (2008).

employment." Appellees' Brief, p. 1. Rather, they argue "that the uncontradicted opinion of Dr. Sullivan supports their position that the claimant's fall on February 14, 2022 was the result of her well-documented pre-existing, chronic, permanent left foot drop and that there were no work factors which substantially contributed to the fall and injury." Id., 8-9. It is therefore their position that they successfully rebutted the presumption of compensability and the claim was properly dismissed given that the claimant's fall was caused by a personal infirmity.

The claimant also avers that due to "the ambiguity of the decision of the trial judge," Appellant's Brief, p. 6, the inquiry into whether the respondents successfully rebutted the presumption necessitates a review of several of the proposed corrections denied by the administrative law judge. These proposed corrections sought to establish that the claimant:

> was at a place where she customarily would be (Motion to Correct, ¶ 3), it was acceptable for her and others to be at that place [Id., ¶ 4], the respondent was aware of this path of travel [Id., ¶ 5)] and consented to this activity [Id., ¶ 6).

Appellant's Brief, p. 7.

The claimant argues that these facts were not only admitted by the respondent but also provided a "basis for a finding that the [claimant's] act of walking to her workstation was an act incidental to employment." Id., 6-7. The trier's denial of these corrections therefore constituted error given that the corrections were "material to the outcome of the claim ...." Id., 7. In support of this argument, the claimant relies in part on McNamara v. Hamden, 176 Conn. 547 (1979), wherein the court reviewed an appeal brought by a claimant challenging the denial of compensation for injuries sustained while he was

"engaged in a customary and permitted game of ping-pong on his employer's premises before the start of the work day ...." Id., 548. The McNamara court held that:

> when determining whether the activity is incidental to the employment, the following rule should be applied: If the activity is regularly engaged in on the employer's premises within the period of the employment, with the employer's approval or acquiescence, an injury occurring under those conditions shall be found to be compensable.

Id., 556.

After remarking that the inquiry into whether a certain activity could be considered incidental to the employment "has been most subject to distortion from one type of case to another," id., 552, the McNamara court further observed that:

> The "going and coming" cases, in which the employee is injured traveling to or from work; ... "personal comfort" cases, in which the employee is attending to some personal need when injured; ... and "horseplay" cases, in which an employee is injured while wrestling ... have become special categories in the law. (Internal citations omitted.)

Id.

Twenty years after McNamara, our Supreme Court expanded upon its analysis of this issue in Kish v. Nursing & Home Care, Inc., 248 Conn. 379 (1999), wherein the respondents challenged a finding of compensability for injuries which occurred when the claimant, a visiting nurse, was struck by an automobile while crossing the street after mailing a letter.[12] The commissioner determined that the claimant's "brief stop to mail a greeting card was so inconsequential, relative to her job duties, that it did not remove her from the course and scope of her employment." Id., 382. In affirming the award of

[12] At the time of the injury, the claimant was also ostensibly in violation of a company policy prohibiting nurses from delivering medical items to patients.

compensation, our Supreme Court stated:

> Although we remain unwilling to assay an exhaustive taxonomy of acts that are "incidental to [employment]," the present appeal calls upon us to clarify the contours of our law. For present purposes, it suffices to explain that the term of art "incidental" embraces two very different kinds of deviations: (1) a minor deviation that is "so small as to be disregarded as insubstantial"; ... and (2) a substantial deviation that is deemed to be "incidental to [employment]" because the employer has acquiesced to it. If the deviation is so small as to be disregarded as insubstantial, then the lack of acquiescence is immaterial. (Internal citation omitted.)

Id., 389.

Having reviewed the foregoing, we note at the outset that, as discussed previously herein, in order to establish that an injury occurred in the course of the employment, our case law requires inter alia that the employee be either "reasonably fulfilling the duties of the employment *or* doing something incidental to it" at the time the injury is sustained. (Emphasis added.) Stakonis v. United Advertising Corporation, supra, 110 Conn. 389. As such, the activities which qualify as being "incidental to employment" are, by definition, not work-related duties but, rather, deviations from those duties.

We are therefore not persuaded that the administrative law judge's denial of the proposed corrections referenced by the claimant constituted error. Even if the administrative law judge had granted these corrections, the "corrected" findings would not serve to establish that the act of walking to one's workstation with the acquiescence of one's employer constitutes a deviation, substantial or otherwise, which could be considered incidental to employment. Moreover, we are unaware of, and the claimant has not presented, any case law which would fly in the face of the generally accepted notion that the act of walking to one's workstation is not only entirely consistent with the duties of the employment but also typically necessary to execute those duties.

The claimant further contends that the administrative law judge's denial of several additional proposed corrections also constituted error. These corrections reflected the claimant's desire to have the decision reflect her testimony that "it benefited her employer for her to be at her workstation [Motion to Correct, ¶ 7] and that it benefited her employer for her to be walking to her workstation [Motion to Correct, ¶ 8]." Appellant's Brief, pp. 7-8. The claimant argues that this testimony was corroborated by her supervisor [Motion to Correct, ¶¶ 9, 10] and was sufficient to "establish a compensable event." Id., 8. As such, it is the claimant's position that these corrections were also material to the outcome of the claim.

In support of this argument, the claimant relies on Blakeslee v. Platt Bros. & Co., 279 Conn. 239 (2006), wherein the claimant challenged the dismissal of his claim for benefits for injuries sustained when coworkers attempted to restrain him while he was experiencing a seizure. In reviewing the appeal, our Supreme Court remarked that if a claimant's action "is one for the benefit of the employer or for the mutual benefit of both, an injury arising out of it will usually be compensable ...." Id., 249, *quoting* Smith v. Seamless Rubber Co., 111 Conn. 365, 368 (1930).

The court ultimately reversed the dismissal of the claim, stating that:

> The conditions of employment are not confined to those which the employer creates.... In determining whether the injury does result from the conditions of the employment, the normal reactions of men to those conditions are to be considered.... [Thus] the right of an employee to recover compensation is not nullified by the fact that his injury is augmented by natural human reactions to the danger or injury threatened or done. ..." (Citations omitted; internal quotation marks omitted.)

Blakeslee v. Platt Bros. & Co., supra, 279 Conn. 246, *quoting* Stulginski v. Waterbury Rolling Mills Co., 124 Conn. 355, 360–61 (1938).

The court further observed that "[i]t seriously cannot be questioned that a risk exists in the workplace that an employee might fall stricken to the ground, thereby prompting the natural, foreseeable reaction of coworkers to render aid." Id., 247. As such, the court concluded that "the coworkers' actions were undertaken to benefit both the plaintiff *and* the defendant. Given this mutual benefit, the injuries sustained as a result thereof must fall within the scope of the general rule that an injury sustained in the course of employment also arises out of the employment."[13] (Emphasis in the original). Id., 251.

Although our Supreme Court adopted the mutual benefit analysis in deciding Blakeslee, it should be noted that the exception is more typically invoked when a claimant has sustained an injury "on a public highway while traveling to or from his place of employment" because such injuries are not generally considered compensable. True v. Longchamps, Inc., 171 Conn. 476, 478 (1976). Alternatively, in McNamara, our Supreme Court explained that "[w]hen an employee is *on the premises* and is *within the period of employment*, ... it should not be necessary to satisfy the additional test of employer benefit. Rather, the basic test should be remembered and applied: Is this

[13] In Dombach v. Olkon Corporation, 163 Conn. 216 (1972), our Supreme Court stated: "An injury sustained on a public highway while going to or from work is ordinarily not compensable. A principal reason for this rule is that employment ordinarily does not commence until the claimant has reached the employer's premises, and consequently an injury sustained prior to that time would ordinarily not occur in the course of the employment so as to be compensable. Furthermore, in cases falling within the ordinary rule, the employee's means of transportation, as well as his route are entirely within his discretion, unfettered by any control or power of control on the part of the employer. ... There are a number of exceptions to the ordinary rule, four of which are pointed out in [Lake v. Bridgeport, 102 Conn. 337, 343 (1925)]: (1) If the work requires the employee to travel on the highways; (2) where the employer contracts to furnish or does furnish transportation to and from work; (3) where, by the terms of his employment, the employee is subject to emergency calls and (4) where the employee is injured while using the highway in doing something incidental to his regular employment, for the joint benefit of himself and his employer, with the knowledge and approval of the employer." (Internal citation omitted.) Id., 222.

activity incidental to the employment?" (Emphasis in the original.) McNamara v. Hamden, supra, 176 Conn. 553.

We therefore believe the "joint benefit" exception is inapplicable to the present matter, given that the injury occurred on the employer's premises and within the period of employment. Moreover, we are not persuaded that the highly unusual fact pattern in Blakeslee is in any way analogous to the circumstances of the present matter. The Blakeslee claimant sustained his injuries when his coworkers attempted to restrain him while he was experiencing a medical emergency. In view of the fact that the workplace in question was not a medical facility, it may be reasonably inferred that these actions by the claimant's coworkers went well beyond the scope of the claimant's (and his coworkers') contemplated employment duties. In addition, as discussed previously herein, we are not persuaded that the instant claimant's act of walking to her workstation constituted any sort of deviation from her employment to which the joint benefit exception could conceivably be applicable.

As we have also noted, a showing that an injury occurred in the course of the employment does not, in and of itself, establish causation, as it is axiomatic that a claimant also bears the burden of proving that the claimed injury arose out of the employment. In the present matter, the respondents have conceded that the injury occurred in the course of the employment but deny that the injury arose out of the employment. As such, the appropriate inquiry is not whether the claimant's activities at the time of the injury were incidental to the employment – the respondents have conceded as much – but whether the injury also arose out of the employment.

To that point, the claimant contends that in Clements, our Supreme Court "indicated, in essence, that walking from one place to another on the employer's premises, per se, satisfies the test for arising out of the employment." Appellant's Brief, p. 8. In making this assertion, the claimant relies on the following quote from Clements: "We have said, therefore, that, if an employee "slip[s] and [is] injured while walking from one place of work to another on his employer's premises in the course of his work, it [can] hardly be claimed that the injury did not arise out of the employment." (Internal quotation marks omitted.) Clements v. Aramark Corp., supra, 339 Conn. 415, *quoting* Gonier v. Chase Companies, Inc., 97 Conn. 46, 51 (1921).

We acknowledge that the Clements court did make this statement, albeit in the context of reviewing its prior decision in Gonier.[14] However, as we have previously discussed herein, the Clements court also went on to draw a clear distinction between unexplained falls and idiopathic falls, and ultimately concluded that because the claimant's injuries were the result of the latter, they were not compensable. Rather, the injuries had been "set in motion by a personal infirmity unrelated to the employment," id., 441 n.17, and the evidentiary record did not support the inference "that the employment contributed to the injury in some meaningful way." Id., 442 n.17.

The court's holding in this regard appears to reflect the sentiment that workers' compensation law "[knows] the difference between something and nothing, and it rightly requires that the employment contribute something to the risk, before pronouncing the

[14] In Gonier v. Chase Companies, Inc., 97 Conn. 46 (1921), our Supreme Court affirmed the commissioner's award of compensation to the survivors of a claimant who sustained fatal injuries when he fell from a platform after experiencing an attack of indigestion. The record indicated that the claimant had been employed as a painter; as such, the court held that the claimant's "employment brought him upon this scaffolding, from which, if he fell, he was in danger of serious injury. The danger of falling and the liability of resulting injury was a risk arising out of the conditions of his employment." Id., 54-55.

injury one arising out of the employment." 1 L. Larson & T. Robinson, Larson's Workers' Compensation Law (2019) § 9.01 [4] [b], p. 9-9. In the matter at bar, the administrative law judge concluded that the claimant's fall "was caused solely by her foot drop condition." Order, ¶ ii. As such, it may be reasonably inferred that the trier had determined that the claimant's "medical condition, absent the contribution of any work activity, was sufficient to cause the fall." Appellant's Brief, p. 11.

The claimant also points out that "Clements does not stand for the proposition that a preexisting condition is an automatic bar to recovery." Appellant's Brief, p. 10. Rather, the court acknowledged that pursuant to "the eggshell plaintiff doctrine," "an employee who establishes a work-related injury is entitled to compensation, even though a preexisting condition increased her susceptibility to incurring an injury or resulted in a more serious injury than otherwise would have been the case in the absence of the preexisting condition." Clements v. Aramark Corp., supra, 339 Conn. 413. The court identified certain medical conditions such as "a nonoccupational heart attack, epileptic fit, or fainting spell," id., 421, as ailments which could cause an idiopathic fall resulting in injury. It is the claimant's contention that her foot drop condition can be differentiated from the above-referenced medical events because "all of these medical conditions, acting alone, could trigger a fall without the involvement of any work activity. Foot drop, acting alone, cannot cause a fall."[15] Appellant's Brief, p. 10. Therefore, "[i]n the present case, there is a substantial employment contribution to the event. The substantial employment contribution is the walking. The act of walking is not only a substantial contribution, it is an absolute necessity for the even to occur." Id., 11.

[15] As the respondents point out, the claimant "fails to cite any support for her contention that foot drop is not sufficient to be considered a preexisting personal infirmity." Appellees' Brief, p. 20.

We are not persuaded by this argument, in part because we have deemed unmeritorious the claimant's contention that the activity of walking was incidental to the employment. As the respondent aptly points out, "[i]f the claimant's argument were given credence, then all falls at work while walking in the course of work would be considered compensable; such an argument is contrary to the Clements decision ...." Appellees' Brief, p. 18. Moreover, in referencing the "eggshell plaintiff doctrine," the Clements court explained that "an *otherwise compensable injury*, that is, one that is causally related to the employment, is no less compensable merely because the employee had a preexisting condition that increased the risk or likelihood of injury or made him more susceptible to serious injury." (Emphasis in the original.) Clements v. Aramark Corp., supra, 339 Conn. 437. We believe that this statement and, more particularly, the court's own emphasis in making this statement, demonstrates the court's expectation that even "eggshell" claimants retain the burden of proving that they have sustained "an otherwise compensable injury." Id.

Thus, although we acknowledge that it is difficult to envision circumstances under which a foot drop condition could cause an individual to fall when not walking, we are not persuaded that the mere act of walking, in and of itself, constituted a substantial contributing factor to the instant claimant's injury. In fact, the record in this matter is devoid of evidence that any workplace condition or activity contributed to the claimant's injury. Rather, the respondents submitted into the record persuasive evidence, in the form of Sullivan's opinion, that the claimant's foot drop condition was a substantial contributing factor to her injury. It was well within the prerogative of the administrative

law judge to accord this evidence the weight he deemed appropriate, given that "[i]t is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony…. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999).

In light of the conclusions reached by the administrative law judge in this matter, it may be reasonably inferred that he ultimately determined that respondents successfully rebutted the presumption that the claimant's injury arose out of her employment. "[T]he presumption is one resting on common experience and inherent probability which as such ceases to have force when countervailing evidence is produced, although the facts which gave rise to it remain in the case." Labbe v. American Brass Co., 132 Conn. 606, 611-12 (1946). Such a determination was unequivocally within the trier's discretion. "The commissioner must determine as a factual matter the causal relationship between a claimant's symptoms and a compensable injury. ... Once the commissioner makes a factual finding, this board is bound by that finding if there is evidence in the record to support it." (Internal citation omitted.) Iannotti v. Amphenol/Spectra-Strip, 13 Conn. Workers' Comp. Rev. Op. 319, 321, 1829 CRB-3-93-9 (April 25, 1995), *aff'd*, 40 Conn. App. 918 (1996) (per curiam).[16]

[16] As discussed previously herein, the claimant has claimed as error the administrative law judge's denial of all but one of the proposed corrections in her motion to correct. Our review of this motion suggests that the denied corrections were either immaterial to the outcome or reflected arguments made at trial which ultimately proved unavailing. As this board has previously observed, when "a motion to correct involves requested factual findings which were disputed by the parties, which involved the credibility of the evidence, or which would not affect the outcome of the case, we would not find any error in the denial of such a motion to correct." Robare v. Robert Baker Companies, 4328 CRB-1-00-12 (January 2, 2002).

There is no error; the December 7, 2023 Finding and Dismissal of Peter C. Mlynarczyk, Administrative Law Judge acting for the Eighth District, is accordingly affirmed.

Administrative Law Judges Zachary M. Delaney and Daniel E. Dilzer concur in this Opinion.