STATE OF MICHIGAN

COURT OF APPEALS

JACK D. HILL, Deceased, by EDWARD F. HILL, Personal Representative,

Plaintiff,

and

AUTOMOBILE CLUB OF MICHIGAN,

Intervening Plaintiff-Appellant,

v

FAIRCLOTH MANUFACTURING COMPANY and THE ACCIDENT FUND COMPANY,

Defendants-Appellees.

FOR PUBLICATION
May 11, 2001
9:05 a.m.

No. 221335
WCAC
LC No. 98-000144

JEFFREY L. FRAZZINI,

Plaintiff-Appellant, Cross-Appellee,

and

AAA OF MICHIGAN,

Intervening Plaintiff-Appellee, Cross-Appellant,

v

TOTAL PETROLEUM,

Defendant-Appellee, Cross-Appellee.

No. 223694
WCAC
LC No. 98-000260

Before: Saad, P.J., and White and Hoekstra, JJ.

SAAD, P.J.

I. Nature of the Case

In these consolidated cases, employees petitioned for workers' compensation benefits for personal injuries they sustained in vehicular accidents. We granted leave to appeal in both cases to consider the narrow legal issue whether an employee may recover workers' compensation benefits for injuries sustained in a vehicular accident where the employee's diabetic seizure caused the accident.

In *Hill*, plaintiff's decedent Jack Hill[1] rear-ended a truck when he suffered a diabetic seizure while driving his employer's delivery truck. The magistrate did not decide whether the accident occurred during the course of Hill's employment because he found, and the Workers' Compensation Appellate Commission (WCAC) affirmed, that Hill's personal or "idiopathic"[2] seizure caused the accident and, therefore, Hill's injuries, including multiple bone fractures and a concussion, did not "arise out of" his employment.[3] In *Frazzini*, plaintiff claims he was driving his car on a work-related errand when he suffered a diabetic insulin reaction. Frazzini sustained a serious hip injury when his car left the road, hit several traffic signs and struck an embankment. The magistrate awarded benefits, finding that Frazzini suffered injuries "arising out of and in the course of employment," but the WCAC reversed for the same reasons articulated in *Hill*, that Frazzini's idiopathic seizure caused the accident and, therefore, his injuries did not arise out of his employment.[4]

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[1] Hill died from an apparent, unrelated heart attack on December 31, 1991, and was, therefore, not available to testify at trial.

[2] In workers' compensation law, "[a]n idiopathic fall is one resulting from some disease or infirmity that is strictly personal to the employee and unrelated to his employment." *Ledbetter v Michigan Carton Co*, 74 Mich App 330, 333; 253 NW2d 753 (1977).

[3] The Michigan Worker's Disability Compensation Act, MCL 418.301(1); MSA 27.237(301)(1), provides:

> An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event shall be the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death.

[4] In both cases, intervening plaintiffs Auto Club of Michigan and AAA of Michigan appeal by leave granted.

The WCAC characterized these claims as "personal risk" cases for which benefits are available only if employment poses risks to the employee greater than the common risks of everyday life. The WCAC reasoned that driving is an everyday activity and, therefore, that plaintiffs' injuries are not compensable. We expressly reject this reasoning and, accordingly, we reverse the WCAC in both cases.

Plaintiffs admit that their seizures caused the accidents but contend that, because their employment placed them in a position that increased the dangerous effects of their seizures and aggravated their injuries, the injuries arose out of their employment within the meaning of the Workers' Disability Compensation Act, MCL 418.301(1); MSA 27.237(301)(1). Plaintiffs, therefore, do not seek compensation for personal injuries related solely to their diabetic illnesses, but claim that their employers should compensate them for injuries stemming from the traffic collisions. We hold that, if the car accidents occurred in the course of their employment, even if caused by an idiopathic condition, employment-related driving constitutes an increased risk which aggravated the employees' injuries. Accordingly, injuries attributable to the collisions "arose out of" their employment, entitling the employees to workers' compensation benefits.

II. Facts and Proceedings

A. Hill v. Faircloth Manufacturing Co.

On January 25, 1991, Jack Hill's supervisor directed him to transport parts to a treatment facility located approximately two miles from defendant-employer's business location. Hill, an insulin-dependent diabetic, left the Faircloth plant alone, driving a company truck. Some distance beyond the exit Hill should have taken to reach the treatment facility, Hill collided with the back of a steel hauler truck. Witnesses reported to police that Hill looked as though he was convulsing from a seizure just before the accident. Hill stated that he remembered driving, but could not remember the collision. Hill sustained injuries in the accident that prevented him from performing his job at Faircloth.

Prior to his death, Hill filed an application for workers' compensation benefits and Auto Club filed a petition seeking reimbursement of no-fault benefits paid to Hill after the accident. After Hill died, his petition was voluntarily withdrawn and Auto Club filed a new petition on July 7, 1992. Following trial, the magistrate denied benefits, specifically concluding that Hill's "employment with [Faircloth] did not cause, contribute to or aggravate his injuries at all" and, therefore, Hill "did not sustain a work-related personal injury as alleged in his petition for benefits."

The WCAC affirmed, rejecting intervening plaintiff's argument that Hill's employment increased the risk of injury posed by his diabetic condition. The WCAC labeled this a "personal risk case" which requires a showing that Hill's work contributed to the injury in some manner beyond the common risks of daily life. The WCAC opined that "the mere act of driving, without proof of an increased risk beyond the normal risks of driving," cannot constitute an "increased risk" presented by employment. Because driving is an everyday activity, the WCAC reasoned, the magistrate properly found that plaintiff's injuries arose "exclusively on account of his personal, diabetic condition."

B. Frazzini v. Total Petroleum, Inc.

On May 19, 1994, Jeffrey Frazzini, manager of a Total gas station, left work in his own car to make a bank deposit. Frazzini also planned to drive to a Wal-Mart store to buy supplies and then to return to work. Frazzini made the bank deposit, but then drove several miles past the nearby Wal-Mart store when his car left the road, crashing into street signs and coming to a stop after hitting an embankment. Frazzini could not remember what happened during the accident; however, like Hill, Frazzini suffered from diabetes and medical testimony established that Frazzini had an insulin reaction while driving.

In May 1996, Frazzini filed a claim for workers' compensation benefits and AAA of Michigan intervened to recoup no-fault benefits it paid Frazzini following the accident. Although Frazzini's accident occurred several miles from his destination, the magistrate concluded that his injuries arose in the course of his employment because he was on a work-related errand. The magistrate rejected Total Petroleum's argument that Frazzini merely suffered an "idiopathic" injury related to his diabetic condition, reasoning that driving increased the danger involved in Frazzini's diabetic seizure and, therefore, held that Frazzini's injury "arose out of" his employment. The WCAC reversed, finding that Frazzini failed to establish a connection between his employment and his injury and that Frazzini failed to show his employment exposed him to a risk greater than those presented in everyday driving.

III. Analysis[5]

For an injury to result in a compensable disability, an employee must suffer an injury "arising out of and in the course of employment. . . ." MCL 418.301(1); MSA 17.237(301)(1). However, not every injury which occurs in the course of a plaintiff's employment is an injury

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[5] This Court reviews de novo questions of law in a final order of the WCAC. *Boardman v State, Department of State Police*, 243 Mich App 351, 356; 622 NW2d 97 (2000). As this Court recently set forth:

> Our review of a decision of the WCAC is limited to whether the WCAC exceeded its authority or committed an error of law. The findings of fact made or adopted by the WCAC within the scope of its powers are conclusive on appeal in the absence of fraud. "If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing decisions of the magistrate, then the courts must treat the WCAC's factual findings as conclusive." *Mudul v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000). However, a decision of the WCAC may be reversed if it is based on erroneous legal reasoning or the wrong legal framework. [*Alston v Chrysler Corp*, 243 Mich App 201, 203; 622 NW2d 795 (2000) (some citations omitted).]

In the instant case we conclude that the WCAC applied erroneous legal reasoning and operated within an incorrect legal framework.

which "*arises out of his employment*." *Ledbetter, supra*, 74 Mich App 334; *McClain v Chrysler Corp*, 138 Mich App 723; 360 NW2d 284 (1984).

Similar to the instant cases, *Ledbetter* and *McClain* concern employees who suffered seizures or fainting spells while at work. However, in *Ledbetter* and *McCain*, the plaintiffs' injuries occurred when they fell to a level, concrete floor after losing consciousness. In both cases, this Court determined that predominantly personal factors caused the falls and that the plaintiffs' employment did not contribute to their injuries. Thus, the cases recognize the general rule that an injury is not necessarily compensable merely because it occurs on an employer's premises. *Ledbetter, supra*, 74 Mich App at 334-335.

The cases also represent those sometimes referred to as "level fall" or "level floor" cases, in which an employee's idiopathic condition causes the employee to fall to level ground. Relying on Larson's treatise on workers compensation law, the *Ledbetter* Court recognized that in "personal risk" or "idiopathic fall" cases, "[u]nless some showing can be made that the location of the fall aggravated or increased the injury, compensation benefits should be denied." *Id*. at 335-336. Referring to Larson, the *Ledbetter* Court drew a distinction between idiopathic falls to a "level floor" and idiopathic falls from platforms or ladders or onto a piece of machinery. *Id*. at 337. Indeed, the Larson treatise recognizes a general agreement among the states that most idiopathic falls are compensable, although some uncertainty remains concerning idiopathic falls to a level floor:

> When an employee, solely because of a nonoccupational heart attack, epileptic fit, or fainting spell, falls and sustains a skull fracture or other injury, the question arises whether the skull fracture (as distinguished from the internal effects of the heart attack or disease, which of course are not compensable) is an injury arising out of the employment.
>
> The basic rule, on which there is now general agreement, is that the effects of such a fall are compensable if the employment places the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle. The currently controversial question is whether the effects of an idiopathic fall to the level ground or bare floor should be deemed to arise out of the employment." 1 Larson, Workers' compensation Law, §9.01[1], p 9-2. (Footnotes omitted.)

In the next subsection, §901[2], which addresses "falls onto dangerous objects," the treatise describes facts similar to those in the instant cases:

> Awards are uniformly made when the employee's idiopathic loss of his or her faculties took place while he or she was in a moving vehicle, as in the case of a delivery worker whose job required the employee to be at the wheel of a truck and who 'blacked out' during an asthmatic attack and went into a ditch, and of an employee who was on a motor scooter when he lost consciousness. It seems obvious that the obligations of their employment had put these employees in a position where the consequences of blacking out were markedly more dangerous

> than if they had not been so employed. Larson, *supra* at pp 9-3, 9-4, footnotes omitted.

Consistent with Larson, the leading Michigan treatise on workers' compensation, Welch, Workers' compensation in Michigan: Law & Practice, §416, pp 4-12-4-13, states:

> Even a truly idiopathic fall would probably be compensable if the worker fell into a moving machine. Under *Ledbetter*, whether a level-floor fall is compensable does not depend on whether the cause of the employee's fall is known. The test is whether the employment *increased the risk of injury*. Thus, if the employment did not cause the worker to fall and did not increase the dangers encountered in falling, the injury is not compensable. On the other hand, if the work caused the fall *or* increased the dangers involved in falling, the injury can be said to have arisen out of and in the course of the employment and is compensable. *See McClain v Chrysler Corp*, 138 Mich App 723, 360 NW2d 284 (1984). . . ." (Emphasis in original).

The cases before us are analogous to those in which an employee suffers greater injuries because the collapse occurs while standing on a ladder or near piece of machinery. Driving a vehicle for their employers increased the level of risk involved in Hill and Frazzini's diabetic seizures and loss of consciousness. Further, both plaintiffs sustained injuries more severe than those they would suffer had they simply blacked out while standing on a level floor at work. In sum, their disabling or aggravated injuries were directly related to the vehicular accidents rather than to diabetes, even though the diabetes caused the accidents to occur.

We disagree with the WCAC's reasoning that because Hill and Frazzini's employment exposed them to no more than "everyday" driving risks, their injuries from the vehicular accidents are not recoverable. That conclusion not only ignores the fact that driving increased the risks involved in their seizures, but it ignores Larson's reasoning and that of out sister states that an employee's injury arises out of his employment if the obligations of employment place him "in a position where the consequences of blacking out were markedly more dangerous than if they had not been so employed." *Larson, supra*. Thus, many "everyday" activities discharged in the course of employment may result in a compensable injury, even if the accident is triggered by an idiopathic condition. For example, driving a car, using a knife in the kitchen, or swimming may well be "common" activities; yet, if a plaintiff cab driver, butcher, or lifeguard lost consciousness while driving a cab, carving meat or saving a swimmer, respectively, and suffered aggravated injuries as a result, plaintiffs should not be denied benefits merely because they were engaged in activities that could be considered common. Because the activity required by their employment placed them in a position of increased risk or aggravated their injuries, the injuries would be compensable even if an idiopathic condition caused them to lose consciousness.

Here, it does not appear that Hill and Frazzini's employment triggered their loss of consciousness which, in turn, directly precipitated the vehicular accidents. Rather, their personal or idiopathic condition, their diabetic seizures, caused the accidents. Nonetheless, we hold that if

Hill and Frazzini drove the vehicles for job-related[6] purposes and if having a diabetic seizure while driving aggravated or otherwise increased plaintiffs' injuries, then those aggravated injuries directly caused by driving the vehicles are compensable under the Worker's Disability Compensation Act, MCL 418.301(1); MSA 27.237(301)(1). So long as plaintiffs prove that the injuries for which they seek compensation are those resulting from the work-related vehicular accident rather than form the idiopathic condition, the injuries are recoverable.

We reverse and remand *Hill* to the magistrate for further findings of fact. In *Frazzini*, we reverse and remand to the WCAC for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Helene N. White
/s/ Joel P. Hoekstra

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[6] We must remand for this determination in *Hill*, but not *Frazzini*. The magistrate did not address the separate issue of whether Hill was acting in the course of his employment when the vehicular accident occurred because the magistrate determined that plaintiff's injuries did not "arise out of the course of plaintiff's employment" – i.e., the accident was not caused by plaintiff's employment. However, in *Frazzini*, the magistrate found that Frazzini was driving of the vehicle in the course of his employment.