**[Cite as *Keith v. Chrysler, L.L.C.*, 2009-Ohio-6974.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Scott A. Keith

Appellant

v.

Chrysler, LLC, et al.

Appellee

Court of Appeals No. L-09-1126

Trial Court No. CI08-3149

**DECISION AND JUDGMENT**

Decided: December 31, 2009

* * * * *

Frank Reynolds, for appellant.

Joseph A. Gregg, and Heidi N. Eischen, for appellee.

* * * * *

SINGER, J.

**{¶ 1}** Appellant brings this accelerated appeal from the judgment of the Lucas County Court of Common Pleas, awarding summary judgment to an employer in a worker's compensation claim. For the reasons that follow, we reverse.

**{¶ 2}** Appellant, Scott A. Keith, works for appellee, Chrysler LLC, at its Toledo North assembly plant. On May 30, 2007, while away from his work station, appellant

noticed the absence of one of his team members from the production line. According to appellant, he was concerned that a problem would arise with the line and began walking in its direction. When he saw that the line had stopped, he started running. As he ran, he rolled his ankle, causing him to fall.

**{¶ 3}** A physician diagnosed appellant with a left ankle sprain/strain and distal fibular fracture. As a result of these injuries, appellant filed an application for payment of compensation and medical benefits with the Ohio Bureau of Workers' Compensation.

**{¶ 4}** On July 26, 2007, a district hearing officer granted appellant's request for the allowance of both left ankle sprain/strain and distal fibular fracture. Appellee appealed the decision.

**{¶ 5}** On December 6, 2007, following a hearing, a staff hearing officer modified the district hearing officer's order, allowing only the left lateral ankle sprain. Appellant did not contest this modification, but appellee again appealed.

**{¶ 6}** On January 31, 2008, the Industrial Commission of Ohio refused to hear appellee's appeal of the staff hearing officer's order. On April 3, 2008, appellee noticed an appeal to the trial court, pursuant to R.C. 4123.512. On May 23, 2008, appellant filed a complaint seeking the right to participate in the Ohio Workers' Compensation Fund for the condition of "left ankle sprain."

**{¶ 7}** In deposition testimony, appellant admitted that in November 2000, he suffered a severe left ankle injury when he fell down a large escalator at Detroit Metro airport. Appellant testified that he was told that his left ankle would never be the same and that he would always have problems with it. Further, appellant testified that during

the May 2007 incident, the floor was not uneven or slippery and that he did not trip or step over anything.

**{¶ 8}** At his deposition, appellant's treating physician for the 2007 injury, testified that, prior to the incident at appellee's plant, he had not treated appellant for any ankle injury and was unaware of any problems with the ankle. The physician offered the opinion, to a reasonable degree of medical probability, that appellant's left ankle injury was a direct and proximate result of the May 2007 incident.

**{¶ 9}** In response to appellant's expert testimony, appellee submitted the affidavit of their own medical expert, stating that appellant's left ankle injury from his fall in November 2000, created a preexisting physical weakness of a laxity of his left ankle. The expert further averred that the preexisting condition caused appellant's ankle to "roll" and resulted in the fall that injured appellant's left ankle in 2007. The medical expert also testified that appellant's running created an increased risk of appellant "rolling" his ankle, which in turn led to appellant's fall at the Chrysler plant.

**{¶ 10}** On February 6, 2009, appellee moved for summary judgment. On April 7, 2009, the trial court concluded that appellant failed to eliminate idiopathic causes and failed to establish the necessary causal connection between his injury and his employment. Further, the court found that appellant's ankle sprain was the result of an idiopathic condition and was, therefore, not compensable. The trial court also ruled that the medical expert testimony presented by appellant failed to establish proximate cause and, as a result, entitled Chrysler to summary judgment.

**{¶ 11}** From this judgment, appellant now brings this appeal, setting forth the following single assignment of error:

**{¶ 12}** "I. The trial court erred prejudicially when it held that as a matter of law, appellant, an injured worker, had failed to establish a causal connection between his injury and his employment, and that therefore the plaintiff was not entitled to participate in the worker's compensation fund."

**{¶ 13}** Appellate review of a summary judgment is de novo. *Hillyer v. State Farm Mut. Auto. Ins. Co.* (1999), 131 Ohio App.3d 172, 175; *Brown v. Scioto Board of Commissioners* (1993), 87 Ohio App.3d 704, 711. Summary judgment is proper only when, looking at the evidence as a whole: (1) there is no genuine issue of material fact; (2) reasonable minds can come to only one conclusion, that is adverse to the party against whom the motion for summary judgment is made, and; (3) the moving party is entitled to judgment as a matter of law. Civ.R. 56(C); *Bostic v. Connor* (1988), 37 Ohio St.3d 144, 146. All issues that are in doubt must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95.

**{¶ 14}** When seeking summary judgment, a party must specifically delineate the basis upon which the motion is brought, *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, syllabus, and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293. When a properly supported motion for summary judgment is made, an adverse party may not rest on mere allegations or denials in the pleading, but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*

(1984), 11 Ohio St.3d 75, 79. A "material" fact is one which would affect the outcome of the suit under the applicable substantive law. *Russell v. Interim Personnel, Inc.* (1999), 135 Ohio App.3d 301, 304; *Needham v. Provident Bank* (1996), 110 Ohio App.3d 817, 826, citing *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 248.

**{¶ 15}** "The test of the right to participate in the Workers' Compensation Fund is not whether there was any fault or neglect on the part of the employer or his employees, but whether a 'causal connection' existed between an employee's injury and his employment either through the activities, the conditions or the environment of the employment." *Bralley v. Daugherty* (1980), 61 Ohio St. 2d 302, 303, citing *Indus. Comm. v. Weigandt* (1921), 102 Ohio St. 1; *Indus. Comm. v. Gintert* (1934), 128 Ohio St. 129; *Fox v. Indus. Comm.* (1955), 162 Ohio St. 569. Ohio Adm. Code 4123-3-09(C) provides that in order to participate in the workers' compensation system, appellant must establish that his injury was sustained "in the course of and arising out of his employment." See also, *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277 (to be compensable, the injury must have occurred "in the course of" and "arising out of" the employment). The employee bears the burden of proving both prongs of this two-prong test before compensation will be allowed. *Fisher*, at 277. Workers' compensation legislation is to be "liberally construed in favor of employees." R.C. 4123.95.

**{¶ 16}** "The 'arising out of' element contemplates a causal connection between the injury and the employment." *Fisher*, at 277. Under this liberal construction required of compensation laws, a mere causal connection is sufficient to satisfy the statutory requirement that the injury be received in the course of and arise out of the employment.

*Rogers v. Allis Chalmers Mfg. Co.* (1949), 85 Ohio App.3d 421. The employment must have been the proximate cause of the injury, such that a condition during employment causes a "happening or event which as a natural or continuous sequence produces an injury without which the result would not have occurred." *Aiken v. Indus. Comm.* (1944), 143 Ohio St. 113, 117; *Snyder v. Ford Motor Co.*, 3d Dist No. 1-05-41, 2005 Ohio 6415, ¶31, citing *Zavasnik v. Lyons Transp. Lines, Inc.* (1996), 115 Ohio App.3d 374, 377. Further the expression "scope of the employment" cannot be accurately defined, because it is a question of fact to be determined according to the peculiar facts of each case. *Tarlecka v. Morgan* (1932), 125 Ohio St. 319.

**{¶ 17}** The causal connection between employment and the injury need not be direct, and an indirect causal connection may be sufficient. *Merz v. Industrial Commission of Ohio* (1938), 134 Ohio St. 36.

**{¶ 18}** To determine the existence of a sufficient causal connection between injury and employment a primary analysis of the following facts and circumstances is required: "(1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." *Fisher*, at 277 (reaffirming *Lord v. Daugherty* (1981), 66 Ohio St.2d 441.); *Ruckman v. Cubby Drilling, Inc.* (1998), 81 Ohio St.3d 117, 122, 1998-Ohio-455, quoting *Lord*, supra, syllabus.

**{¶ 19}** Here, there is no dispute that appellant's injury was sustained "in the course of" his employment. Rather, the issue on appeal is whether appellant's injury did, in fact, "arise out of" his employment.

**{¶ 20}** Falls and injuries caused by a preexisting or idiopathic condition unrelated to employment are not compensable under workers' compensation law. *Waller v. Mayfield* (1988), 37 Ohio St. 3d 118, 123, citing *Stanfield v. Indus. Comm.* (1946), 146 Ohio St. 583. However, if the conditions that led to the fall and resulting injury were significantly increased due to a condition of employment, then the idiopathic injury is compensable. *Indus. Comm. v. Nelson* (1933), 127 Ohio St. 41. For workers' compensation purposes, idiopathic refers to a preexisting physical weakness or disease that contributes to the injury or incident. *Mayfield*, at 123.

**{¶ 21}** Appellee argues that appellant did not establish a causal connection between his ankle injury and his employment at Chrysler. Rather, appellee contends that appellant's injury was the result of an idiopathic condition that was not causally related to his employment and, therefore, appellant's claim is not compensable. In support of this, appellee points to testimony from its medical expert who testified that appellant had a preexisting physical weakness in his left ankle which directly caused appellant's ankle to "roll," resulting in the 2007 injury.

**{¶ 22}** Appellant insists that he did not have an idiopathic condition that would have caused the injury to his left ankle. Appellant maintains that he had not suffered any pain or sprains to his left ankle in the past five years. Appellant contends that his injury was sustained "in the course of" and "arising out of" his employment. Specifically,

appellant argues that he fell while running "for the benefit of his employer," in order to prevent a potential problem caused by a co-worker's absence from the line, when he "rolled" his ankle and fell.

**{¶ 23}** In support of this position, appellant puts forth his treating physican's affidavit in which the physician avers that appellant had no symptoms involving his left ankle prior to his work injury, his injury was "not peculiar to [appellant's] pre-existing physical weakness" and, the physician opines to a reasonable degree of medical probability, the injury at issue is "a direct and proximate result of his work injury of May 30, 2007."

**{¶ 24}** Whether appellant's injury was the result of an idiopathic or preexisting condition is material issue in the case. The conflicting medical testimony creates a genuine issue of material fact as to whether appellant had a preexisting weakness in his left ankle that may not be resolved on summary judgment.

**{¶ 25}** Accordingly, we conclude that the trial court erred in granting summary judgment to appellee. Appellant's medical expert's testimony, contrasted with appellee's medical expert's testimony, creates a genuine issue of material fact as to whether appellant's injury was proximately caused by a preexisting idiopathic condition.

**{¶ 26}** On consideration, the judgment of the Lucas County Court of Common Pleas is reversed. This matter is remanded to said court for further proceedings consistent with this decision. It is ordered that appellee pay the court costs of this appeal, pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE