[Cite as *Anderson v. Sherwood Food Distrib.*, 2006-Ohio-101.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86164

ROBERT ANDERSON,	:	
	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
SHERWOOD FOOD DISTRIBUTORS, ET AL.,	:	
	:	
Defendants-Appellees	:	
DATE OF ANNOUNCEMENT OF DECISION	:	JANUARY 12, 2006
CHARACTER OF PROCEEDING:	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 477555
JUDGMENT	:	AFFIRMED.
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellant:
Gregg A. Austin, Esq.
Bruce R. Rose, Esq.
650 Rockefeller Building
614 Superior Avenue, N.W.
Cleveland, Ohio 44113

For defendant-appellee Sherwood Food Distributors:
Robert E. Blackham, Esq.
Tammi Carter, Esq.
Lynn A. Gross, Esq.
ROETZEL & ANDRESS
1375 East Ninth Street
Ninth Floor
Cleveland, Ohio 44114

For Administrator, Bureau of Workers' Compensation:
Jim Petro, Esq.
Attorney General
BY: Mary Ann Rini, Esq.
Assistant Attorney General

State Office Building, 12th Floor
615 West Superior Avenue
Cleveland, Ohio 44113-1899

MICHAEL J. CORRIGAN, J.:

{¶ 1} The sole issue in this workers' compensation case is whether an ulcerated blister, caused by the rubbing of a boot selected and worn by the employee during the course of employment, and approved for safety purposes by the employer, constitutes a compensable injury under Ohio's workers' compensation scheme.

{¶ 2} The facts are undisputed. Defendant Sherwood Food Distributors hired claimant Robert Anderson as a porter. Sherwood required Anderson to wear heavy-duty work boots, but did not tell him which brand of boot to wear. It did insist upon approving the choice of footwear for safety purposes. Within a matter of weeks, the diabetic Anderson noticed a discoloration and blister on his big toe. Even though he did not experience any pain, his doctor later told him that his work boot was defective because it rubbed against the toe. The doctor said that the defective boot was the cause of the blister. Anderson then filed this workers' compensation claim, seeking compensation for his medical treatment. The court granted Sherwood's motion for summary judgment, finding that "when an employer requires an employee to wear boots of the employee's choosing, for the sole purpose of protecting the employee against the risks and hazards incident to the employee's duties, the employee cannot recover under the workers' compensation act for injuries caused by the boots."

{¶ 3} In order to qualify for workers' compensation, Anderson has to show that he suffered an injury "in the course of, and arising out of, his employment." R.C. 4123.01(C). Ordinarily, this would be a question of fact. *Pilar v. Ohio Bureau of Workers' Compensation* (1992), 82 Ohio App.3d 819. Here, the facts are undisputed, thus we may review the court's determination de novo.

{¶ 4} We find that while Anderson suffered the blister in the course of employment, there is no evidence to show that it developed in the *scope* of employment. The "scope of employment" has been defined as limiting:

{¶ 5} "[c]ompensable injuries to those sustained by an employee while performing a required duty in the employer's service. *** 'To be entitled to workmen's compensation, a workman need not necessarily be injured in the actual performance of work for his employer.' *** An injury is compensable if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business." *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117, 120, 1998-Ohio-455.

{¶ 6} Anderson did not receive his injury while in the performance of an activity that was logically related to Sherwood's business. He suffered an injury caused by a defective boot of his own choosing. To be sure, he had to wear the boot as a condition of his employment and subject to Sherwood's approval, but his employment did not cause the blister – his defective boot did.

{¶ 7} We are aware of cases relating to diabetics developing blisters. The common thread in these, like all workers' compensation cases, is whether the injury arose in the course and scope of employment. For example, in *Indus. Comm. v. Mounjoy* (1930), 36 Ohio App. 476, the claimant suffered a blister on his foot while walking over rough ground at a construction site. The blister became infected and the claimant died. A jury awarded the widow benefits. The court of appeals held that the cause of the blister, whether by shoes or by work conditions, was a matter which the jury decided in the claimant's favor. Therefore, the court upheld the verdict on grounds that the claimant had to traverse the rough terrain of a construction site as part of his job duties – something that yielded a tangible benefit to his employer and thus fell within the course of employment.

{¶ 8} There was no evidence that conditions peculiar to the job site contributed to Anderson's injury, as in the *Mounjoy* case. Here, Anderson simply had to wear boots of his own choosing, subject to approval for safety purposes by Sherwood. Nothing particular to the Sherwood workplace contributed to the injury.

{¶ 9} We are aware that our workers' compensation statute is no-fault. We are also aware that Anderson wore his boots as a condition of his employment. Nevertheless, the statute requires a nexus between the injury and employment as a predicate to compensation; hence the requirement that an injury arise in the course of and scope of employment. Anderson may have been required

to work as a condition of employment, but there is no evidence to show that his purchase of a defective boot had anything whatsoever to do with the actual functioning of his job.

{¶ 10} To illustrate this point, suppose that a restaurant required a server to wear a white shirt of the employee's choosing as part of a mandatory uniform. If the employee chose a shirt that fit too snugly in the neck and caused chaffing, there could be no argument that the chaffing caused by the shirt had anything to do with the actual performance of the job. The shirt may have been required as a condition of employment, but the injury itself did not arise out of something related to the job – the shirt was simply too tight. All that could be proven in this example is that the employee moved about on the job – something all persons presumably do without specific reference to the job itself.

{¶ 11} Anderson's claim in this case is no different from our example. The no-fault aspect of our workers' compensation law does not extend to claims that are wholly unrelated to the performance of job duties. We therefore find that the court did not err by granting summary judgment because Anderson was not, as a matter of law, entitled to compensation for his injury.

Judgment affirmed.

It is ordered that appellees recover of appellant their costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN
JUDGE

ANTHONY O. CALABRESE, JR., P.J., CONCURS.

PATRICIA ANN BLACKMON, J., DISSENTS
WITH SEPARATE OPINION.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

COURT OF APPEALS OF OHIO EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86164

ROBERT ANDERSON :
:
Plaintiff-Appellant :

	:	D I S S E N T I N G
-vs-	:	
	:	O P I N I O N
SHERWOOD FOOD DISTRIBUTORS ET AL.	:	
Defendants-Appellees	:	

DATE: JANUARY 12, 2006

PATRICIA ANN BLACKMON, J., DISSENTING:

{¶ 12} I respectfully dissent from the majority. I would vacate the trial court's judgment and enter judgment in favor of Anderson.

{¶ 13} An injury sustained by an employee is compensable if it occurred "in the course of" and "arising out of" the injured employee's employment. The Ohio Supreme Court has explained that "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."[1]

{¶ 14} Therefore, the fact that Anderson selected a work boot that had a defect is of no consequence because the workers' compensation statute is a no-fault statute. Thus, the concepts of blame, fault, and negligence are irrelevant. The only requirement

[1] *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 276.

for coverage is that there is a causal connection between the injury and the employment.[2]

{¶ 15} The "arising out of" element contemplates a causal connection between the injury and the employment. "In the course of" element is associated with the time, place and circumstance of the injury."[3]

{¶ 16} In the instant case, both elements are met. Anderson's injury "arose out of" his employment because he was required to wear work boots, and he wore them exclusively in connection with his employment. Wearing approved work boots was a non-negotiable condition of Anderson's employment with Sherwood. It is also undisputed that the blister was caused by the seam rubbing against Anderson's toe while performing his work duties, which consisted primarily of walking and standing. Therefore, there is no question that the injury "arose out of" Anderson's employment.

{¶ 17} Anderson's injury also occurred at the place of his employment; therefore, the injury occurred "in the course of" his employment.

{¶ 18} In using its "white shirt" hypothetical, the majority seems to assert that an injury is only compensable under workers' compensation if the injury occurred as a result of some hazard or

---

[2]Id.

[3]Id.

risk pertaining specifically to the employment and not a risk exposed to the general public.[4] This is an incorrect application of the law. The "special hazard" rule is an exception to the general rule that an employee with a fixed place of employment, injured while traveling to or from his place of employment, may not participate in the Workers' Compensation Fund.[5] The special hazard rule does not apply to injuries that occur on the employer's premises, while the employee is performing tasks for which he was employed.

{¶ 19} In addition, walking and standing were a primary function of Anderson's job. Therefore, his footwear was critical to aiding him in performing his job safely. A waiter is required to wear a uniform for appearances only and not to aid in performing his actual duties.

{¶ 20} Thus, keeping in mind that the workers' compensation statute should be construed liberally in favor of the employee,[6] I conclude a "causal connection" existed between Anderson's injury and his employment. Therefore, I would vacate the trial court's judgment and enter judgment in favor of Anderson.

---

[4]*Grimes v. Mayfield* (1989), 56 Ohio App.3d 4, 7.

[5]*MTD Products, Inc. v. Robatin* (1991), 61 Ohio St.3d 66.

[6]*Bailey v. Republic Engineered Steels, Inc.*, 91 Ohio St.3d 38, 40, 2001-Ohio-236.