

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by MARSHALL
Commissioner

Oct. 7, 2019

PATRICE SAINVIL-THOMPSON v. SENTARA HEALTHCARE
SENTARA HEALTHCARE, INC., Insurance Carrier
PMA MANAGEMENT CORP, TPA, Claim Administrator
Jurisdiction Claim No. VA00001552184
Claim Administrator File No. 0027W06130
Date of Injury December 18, 2018

PATRICE SAINVIL-THOMPSON v. SENTARA HEALTHCARE
SENTARA HEALTHCARE, INC., Insurance Carrier
PMA MANAGEMENT CORP, TPA, Claim Administrator
Jurisdiction Claim No. VA02000032350
Claim Administrator File No. 0028W40821
Date of Injury December 19, 2018

Corey R. Pollard, Esquire
For the Claimant.¹

Adam S. Rafal, Esquire
For the Defendants.

REVIEW on the record by Commissioner Marshall, Commissioner Newman and Commissioner Rapaport at Richmond, Virginia.

The defendants request review of a May 31, 2019 Opinion finding the claimant suffered a compensable injuries by accident arising out of the employment on December 18 and December 19, 2018. We AFFIRM.

¹ The claimant appeared *pro se* at hearing. Attorney Pollard noted representation for the claimant on July 22, 2019.

I. Material Proceedings

The claimant filed a December 29, 2018 Claim for Benefits (JCN VA00001552184) alleging an injury to the head/brain occurring on December 18, 2018. She also filed an April 22, 2019 Claim for Benefits (JCN VA02000032350) alleging an injury to the head/brain occurring on December 19, 2018. In both claims, the claimant sought medical benefits and temporary total disability beginning December 19, 2018 and continuing.

Pertinent to this appeal, the defendants defended both claims on the basis that the claimant did not suffer an injury by accident arising out of the employment.

The Deputy Commissioner issued a May 31, 2019 Opinion. She found the claimant credibly testified that on December 18, 2018 she leaned forward at a desk to pick up some papers and hit the right side of her head on a shelf that overhangs the desk. And, on December 19, 2018 she was sitting in front of the computer at the desk and turned slightly to reach for her papers while simultaneously standing. She hit the same shelf a second time. The claimant described the shelf as protruding far over the desk. The claimant's supervisor testified the shelf protruded approximately halfway over the desk. The Deputy Commissioner found the claimant's testimony was uncontradicted and consistent with her accounts of the injury in her medical records. She found that the protrusion of the shelf was a contributing factor and a risk of employment that caused the accident. She further found the risk of the claimant striking her head on the shelf was peculiar to the work. Based upon the medical evidence, she awarded medical benefits for post-concussive disorder in both claims. In JCN VA00001552184 she awarded temporary total disability from

December 19, 2018 through February 28, 2019. She granted the defendants a credit for payments made pursuant to the employer-funded short-term disability policy.

The defendants request review. They argue the claimant failed to prove a compensable injury by accident in both claims.

II. Findings of Fact and Rulings of Law

We have reviewed the record and find no error in the Deputy Commissioner’s conclusions. We recite the facts to the extent necessary to support our reasoning.

“The burden is upon the claimant to prove by a preponderance of the evidence that [she] sustained a compensable injury.” *Va. Dep’t. of Transp. v. Mosebrook*, 13 Va. App. 536, 537 (1992) (citing *Woody v. Mark Winkler Mgmt., Inc.*, 1 Va. App. 147, 150 (1985)). “In Virginia we have adopted the ‘actual risk test,’ which requires only that the employment expose the workman to the particular danger from which he was injured, notwithstanding the exposure of the public generally to like risks.” *Lucas v. Lucas*, 212 Va. 561, 563 (1972) (citing *Immer & Co. v. Brosnahan*, 207 Va. 720, 725 (1967)). “The mere happening of an accident at the workplace, not caused by any work related risk or significant work related exertion, is not compensable.” *Plumb Rite Plumbing Serv. v. Barbour*, 8 Va. App. 482, 484 (1989).

“To establish the ‘arising out of’ element, the employee must establish that a workplace condition either caused or contributed to her injury.” *Brown-Griffin v. Norfolk City Health Dep’t*, JCN VA00001509009 (June 24, 2019) (citing *PYA/Monarch & Reliance Ins. Co. v. Harris*, 22 Va. App. 215, 221-22 (1996)).

The claimant is required to establish “a causal connection between [her] injury and the conditions under which the employer required the work to be performed.” *Cty. of Chesterfield v. Johnson*, 237 Va. 180, 183-184 (1989) (quoting *United Parcel Serv. v. Fetterman*, 230 Va. 257, 258 (1985)).

The claimant, a nurse, testified she was working an overnight shift at a work station that had a shelf overhanging the desk. (Tr. 22, 26, 34-35.) On the evening of December 18, 2018, she was walking towards the desk, leaned forward to pick up some papers, and hit the right side of her head on corner of the shelf. (Tr. 23, 26-27, 41.) On the morning of December 19, 2018, she was sitting in front of the computer at the desk and turned slightly to reach for papers while simultaneously standing, hitting her head on the same corner of the shelf again. (Tr. 27, 41-42.) When asked if there was anything wrong with the shelf, the claimant testified, “[i]t protrudes extremely far over the desk. It has a sharp corner on it.” (Tr. 23.) The employer’s witness Deborah Fields testified the shelf protrudes half way over the desk. (Tr. 56.)

A photograph of the desk area was submitted into evidence. (Def. Ex. 2.) It shows an L-shaped cubicle desk, with a computer and desk chair in the corner. There is a cabinet and a shelf on the wall to the right of the chair. The shelf protrudes out farther than the cabinet, and appears to protrude halfway over the desk. The corners of the shelf are exposed.

As the Deputy Commissioner found, the claimant’s testimony regarding the mechanisms of her injury was uncontradicted and consistent with her accounts to medical providers. The evidence established that the claimant’s injuries were caused by an actual risk of the employment. The shelf protruded far over the desk and had an exposed sharp corner. The claimant was required

to maneuver around the shelf as part of her employment, heightening her risk of injury. The claimant's employment exposed her to this particular hazard that caused her injuries.

Therefore, her December 18 and 19, 2018 injuries arose out of the employment.²

III. Conclusion

We AFFIRM the May 31, 2019 Opinion.

This matter is removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information

² We note that the cases relied upon by the defendants are distinguishable. In those cases, the evidence did not establish that a condition of the workplace caused the claimants' injuries. See *Southside Va. Training Ctr. v. Shell*, 20 Va. App. 199 (1995) (finding no credible evidence that a defect in the stairs or a condition of the claimant's employment caused her to fall); *Jennings v. Richmond Pub. Schs.*, No. 2497-11-2 (Va. Ct. App. June 26, 2012) (finding the ordinary threshold was not a hazard peculiar to the claimant's employment); *City of Norfolk v. Vaughn*, No. 0069-95-1 (Va. Ct. App. July 5, 1995) (finding nothing about the car or its door, or the manner in which the claimant was doing her job, caused her to hit her head on the door frame); *Griffin v. Chesapeake Sheriff's Office*, VWC File No. 194-53-41 (Feb. 24, 2000) (finding nothing about the manner in which the claimant was doing her job or a condition of the workplace caused her to bump her knee on the table); *Spady v. Va. Port Auth.*, VWC File No. 188-77-03 (Mar. 1, 1999) (finding the claimant failed to prove that a condition of the workplace caused him to strike his ankle on the car). *Shell* and *Jennings* dealt with usual, non-defective architectural features – a stair and a threshold - with no contributing characteristics. In *Spady*, the claimant could not explain why the car door moved suddenly, causing him to strike his foot on the car. In *Vaughan*, the claimant struck her head on the door opening. The Commission and the Court of Appeals of Virginia issued summary conclusions. The latter did not explain its reasoning, except to declare no particular risk or condition of the employment caused her injury. It said there was nothing unusual about the car or its door and the claimant was not performing a "significant work-related activity," when she hit her head. It relied on *United Parcel Service v. Fetterman*, 230 Va. 257, 258 (1985) for the proposition that, "an injury that results from a hazard or risk to which the employee is equally exposed apart from the employment does not arise out of the employment." It did not reconcile *Fetterman* with *Lucas v. Lucas*, 212 Va. 561, 563 (1972) and *Immer & Co. v. Brosnahan*, 207 Va. 720, 725 (1967) which held the actual risk test required, "only that the employment expose the workman to the particular danger from which he was injured, notwithstanding the exposure of the public generally to like risks." *Griffin* did not involve a piece of furniture with unusual protruding edges which constitute a risk of the employment.

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concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.