Circuit Court for Montgomery County
Case No. 439537V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3389

September Term, 2018

MONTGOMERY COUNTY, MARYLAND

v.

SOLOMON WOLDU

Kehoe,
Arthur,
Beachley,

JJ.

Opinion by Beachley, J.

Filed: February 14, 2020

The Workers' Compensation Commission disallowed appellee Solomon Woldu's claim for disability benefits, finding that his injury resulting from an aneurysm rupture was idiopathic in nature. Woldu appealed that decision to the Circuit Court for Montgomery County, which reversed the Commission's decision.

In this Court, appellant Montgomery County presents a single question:

> Did the trial court err in finding [a]ppellee's accidental injury arose out of and in the course of his employment and therefore was covered under the Workers' Compensation Act?

We perceive no error and therefore shall affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The circumstances surrounding Mr. Woldu's injury are undisputed. Mr. Woldu was employed as a bus operator by Montgomery County, Maryland. On December 2, 2016, he was found unconscious and bleeding on the floor of a bus. Footage from a video on the bus showed that, during a ten-minute break between runs, Mr. Woldu performed several leg stretches followed by twenty-one "push-pull exercises," similar to push-ups, against the back of one of the seats on the bus. He then grabbed his head, sat down on one of the seats, and collapsed to the floor. He remained on the floor of the bus for over an hour and forty-five minutes before he was discovered. Mr. Woldu had suffered the rupture of a 17.1 millimeter aneurysm, resulting in a serious brain injury.

On January 9, 2017, Mr. Woldu filed a claim with the Workers' Compensation Commission. The Commission disallowed Mr. Woldu's claim, finding that "claimant's injury was idiopathic in nature, and, therefore, is not compensable." Mr. Woldu appealed that decision to the Circuit Court for Montgomery County, requesting a jury trial. The

parties subsequently agreed to proceed with a bench trial, which took place on October 11, 2018.

Although there is no dispute as to how Mr. Woldu was injured, the parties vigorously contested whether Mr. Woldu's injuries were compensable under the Workers' Compensation Act. The County asserted that Mr. Woldu's injury was not compensable because it did not "arise[] out of and in the course of employment" as required by Md. Code (1991, 2016 Repl. Vol.), § 9-101(b)(1) of the Labor and Employment Article ("LE"). Because the underlying premise of the County's argument was that Mr. Woldu's aneurysm rupture was idiopathic and had no relation to his employment, the trial involved the prototypical "battle of the experts" with Gary W. London, M.D. testifying for Mr. Woldu and Ghazala Kazi, M.D. testifying for the County. Because both experts carefully examined and relied upon the exercises Mr. Woldu was performing at the time of his injury, we will first outline the County's policy regarding recommended physical fitness for its bus drivers.

During training, bus operators are given a packet of information that includes a section about physical fitness and bus ergonomics. The packet states, "The purpose of this module is to provide you with information to help yourself feel the best you can. The better you feel physically, the more likely you are to feel good mentally, this will allow you to better interact with the riding public." It goes on to suggest that bus operators who are not feeling well would struggle to properly perform their job duties. The training packet additionally states:

- "We need you feeling your best."
- "To meet the daily challenges of being a Ride On[1] Operator, you must take good care of yourself. Sound physical and mental health is important so you can perform at your best each day."
- "[B]eing physically and mentally healthy is critical."
- "Focusing on your wellness can directly improve your job performance. It is up to you to make physical wellness a reality for yourself."

The section of the packet that introduces physical fitness lists "Cardiovascular Fitness" and "Muscle Flexibility & Strength," stating about the latter, "Stretching exercises improve flexibility, while 'resistance' exercises (such as push-ups) build muscle strength." The packet suggests that, if the employee falls into one of six listed categories, he or she should consult a physician before starting an exercise program. Among the listed categories are those who are "[o]ver 35 years old and have not exercised in a while." Mr. Woldu was 59 years old at the time of his injury. The record does not indicate how frequently Mr. Woldu exercised.

The packet also includes a section on "bus ergonomics," which provides examples of stretches as well as pictures of people demonstrating the stretches while standing in front of a bus or while seated in an office. The packet states, "Use these simple stretches on your break to loosen tight muscles and relieve stress!" We now turn to the expert medical testimony.

Dr. London's testimony was presented through video deposition. He testified that

[1] Ride On is the name of Montgomery County's bus service.

Mr. Woldu's aneurysm rupture was "secondary to and during a prescribed exercise program while working as a Ride On bus driver for Montgomery County, Maryland." Dr. London supported his opinion that Mr. Woldu's exercise on the bus contributed to the aneurysm rupture with a study indicating that "in the hour after exposure to physical exercise, . . . patients over the age of 60 have a 6 times higher risk of rupture." Dr. London described Mr. Woldu's exercises on the bus as "vigorous push-pull exercises." He testified that, while these exercises were not explicitly part of the bus ergonomics program encouraged by the County, they were "a continuation of what [Mr. Woldu] was encouraged to do in the first place." On cross-examination, Dr. London agreed that large, irregularly-shaped aneurysms, such as Mr. Woldu's, have a higher chance of rupturing. Nevertheless, Dr. London expressed his opinion, without objection, that Mr. Woldu's exercise "absolutely" contributed to the rupture. Dr. London also opined that the delay in medical treatment exacerbated Mr. Woldu's brain injury.[2]

Dr. Kazi testified that the rupture of the aneurysm could have been spontaneous and it was essentially a coincidence that the aneurysm happened to rupture while Mr. Woldu was exercising. She stated that the most important factors concerning aneurysm rupture are the size, regularity, and location of the aneurysm as well as the patient's age. Dr. Kazi opined that Mr. Woldu's rupture was caused by the large size and irregular shape of his aneurysm. Dr. Kazi acknowledged that some studies suggest that "vigorous exercise can

[2] The County interposed only two objections during Dr. London's deposition, both of which related to the delay in treatment.

cause an aneurysm rupture[,]" but stated that she did "not think that [Mr. Woldu's activity] was a vigorous exercise." She described vigorous exercise as activities which cause an increase in a person's heart and respiratory rates. In her view, the exercises Mr. Woldu performed before the rupture were not vigorous because he did not appear to be out of breath and he had only performed the exercises for 47 seconds before he collapsed. She acknowledged that the County encouraged its bus drivers to do stretching exercises, but she did not agree that Mr. Woldu's exercise "accelerated the rupture." Dr. Kazi testified that there are 145 trigger factors for aneurysm rupture, including "nose-blowing, straining for defecation, being startled, anger, sexual intercourse, and physical exercise." She also opined that the study Dr. London relied upon supported the conclusion that exercise does not cause rupture of larger aneurysms. She testified that there is no way to know for certain if Mr. Woldu's injury was exacerbated by the delay in medical treatment, but that it is possible he would have had a better outcome if he had received treatment within fifteen minutes.

At the conclusion of trial, the circuit court found that the County encouraged bus operators to engage in the wellness activities listed in the packet. The court further found that "it was reasonable for the plaintiff, Mr. Woldu, at the time of his accidental injury, to be engaging in bus ergonomics," and that Mr. Woldu's bus exercises at the time of his injury were reasonable and incident to his employment. In so finding, the court focused on various statements made in the wellness packet that positively correlated exercise to improved job performance. Moreover, the court accepted Dr. London's testimony that Mr. Woldu's exercise on the bus contributed to the aneurysm rupture.

Concluding that Mr. Woldu's injury arose out of and in the course of employment, the circuit court found Mr. Woldu's claim compensable. After the court denied the County's motion to alter or amend judgment, this timely appeal ensued.

DISCUSSION

The County argues that "the circuit court committed legal error in finding the case compensable as a matter of law" because the injury was idiopathic. In the County's view, the evidence failed to show either that the exercises caused the aneurysm to burst or that Mr. Woldu's specific "push-pull" exercises were incidental to his employment. The County also argues that the circuit court improperly concluded that the failure to discover Mr. Woldu for over one-and-a-half hours after he collapsed exacerbated his injury. According to the County, failure to promptly respond goes only to negligence, which is irrelevant under workers' compensation law.[3]

Mr. Woldu responds that, because Montgomery County encouraged bus operators to perform stretches and exercise as part of its wellness program, his "push-pull" exercises were incidental to his employment. Mr. Woldu further argues that expert testimony at trial provided a sufficient factual basis for the circuit court to find that the exercises caused the aneurysm to rupture.

"When the trial court holds an essential trial *de novo* under [LE] § 9-745(d) to resolve a question of fact, the trial court has acted as trier of fact, and, as a result, we review

[3] Because we hold that the rupture of the aneurysm was compensable from its onset, we need not decide whether the delay in medical treatment constituted an independent basis to grant Mr. Woldu's workers' compensation claim.

the decision of the trial court as we would in any other bench trial." *McLaughlin v. Gill Simpson Elec.*, 206 Md. App. 242, 253 (2012). We therefore review the circuit court's factual findings for clear error, and review its legal conclusions *de novo*. Maryland Rule 8-131(c); *Bottini v. Dep't of Fin.*, 450 Md. 177, 187 (2016).

The Commission's decision is *prima facie* correct in an essentially *de novo* appeal to the circuit court only as to factual findings, not legal ones. *Simmons v. Comfort Suites Hotel*, 185 Md. App. 203, 211 (2009). In an essentially *de novo* appeal to the circuit court, the "burden is upon the appellant to overcome the presumption that the decision of the Commission is *prima facie* correct." *Id.* at 225 (quoting *Bd. of Educ. for Montgomery Cty. v. Spradlin*, 161 Md. App. 155, 183 (2005)). However, the circuit court may still reach a different conclusion on the same evidence. *Spradlin*, 161 Md. App. at 184–85. That the Commission's decision is "*prima facie* correct" merely means that the appellant at the circuit court level has the burden of persuasion, "not necessarily a burden of additional proof." *Id.* at 185 (emphasis removed) (quoting *Williams Constr. Co. v. Bohlen*, 189 Md. 576, 580 (1948)).

To be compensable under the Maryland Workers' Compensation Act, an accidental injury must have occurred "in the course of" employment, and must "arise[] out of" the employment. LE §§ 9-101(b)(1), 9-501(a). The former contemplates the "time, place, and circumstances" in which the injury occurred; the latter looks to the origin or cause of the injury. *Livering v. Richardson's Rest.*, 374 Md. 566, 574, 576–77 (2003). "[W]here an injury clearly 'arises' from the employment, the 'in the course' requirement may be relaxed, and where the injured employee is squarely 'in the course' of employment, the

arising requirement may be relaxed." *Montgomery Cty. v. Smith*, 144 Md. App. 548, 555 (2002) (quoting Clifford Davis, *Workmen's Compensation in Connecticut—The Necessary Work Connection*, 7 Conn. L. Rev. 199, 201 (1974)).

I. Mr. Woldu's Injuries Occurred "In The Course Of" His Employment

"An injury arises 'in the course of employment' when it occurs: (1) within the period of employment, (2) at a place where the employee reasonably may be in the performance of his duties, and (3) while he is fulfilling those duties or engaged in doing something incident thereto." *Smith*, 144 Md. App. at 558 (citing *Knoche v. Cox*, 282 Md. 447, 454 (1978)). The third part of this test asks "how far the employee placed himself or herself outside the employment during that period." *Schwan Food Co. v. Frederick*, 241 Md. App. 628, 652 (2019) (quoting *Montgomery Cty. v. Wade*, 345 Md. 1, 11 (1997)). The activity resulting in injury must have "had a purpose related to the employment." *Austin v. Thrifty Diversified, Inc.*, 76 Md. App. 150, 157 (1988) (citing *Wiley Mfg. Co. v. Wilson*, 280 Md. 200, 206 (1977)). When the activity that directly caused the injury is recreational or social in nature, Maryland courts have adopted the Larson Rule, which states that injuries occur in the course of employment when:

> (1) They occur on the premises during a lunch or recreation period as a regular incident of the employment; or
>
> (2) The employer, by expressly or impliedly requiring participation, or by making the activity part of the services of an employee, brings the activity within the orbit of the employment; or
>
> (3) The employer derives substantial direct benefit from the activity beyond the intangible value of improvement in employee health and morale that is common to all kinds of recreation and social life.

Smith, 144 Md. App. at 558 (quoting 4 Arthur Larson, *Workers' Compensation Law* § 22.01 (2001)). The "time, place, and circumstances" inquiry of the "in the course of" requirement seeks to determine "[i]f the injury occurred at a point where the employee was within the range of dangers associated with the employment." *Schwan Food Co.*, 241 Md. App. at 652 (quoting *Wade*, 345 Md. at 12).

We readily conclude that the circuit court did not err in determining that Mr. Woldu's injury occurred in the course of his employment. Here, the injury occurred during a ten-minute break between bus runs, a break that clearly fell within the period of his employment. *See Mack Trucks, Inc. v. Miller*, 23 Md. App. 271, 273 (1974). Moreover, Mr. Woldu was injured while on his assigned bus, which represented Mr. Woldu's employment "premises" for the performance of his duties. *See Wade*, 345 Md. at 12. An employee generally remains within the course of his employment during a short break taken on the premises, provided his activities during that break are encouraged or acquiesced in by the employer. *Cf. King Waterproofing Co. v. Slovsky*, 71 Md. App. 247, 253–54 (1987) (discussing when activities during "coffee breaks" arise out of the employment). The circuit court noted that the County expressly encouraged bus operators to exercise during their breaks, finding that the "break was intended to benefit both" Mr. Woldu and the County. Under these circumstances, Mr. Woldu's injury occurred in the course of employment as delineated in the Larson Rule set forth above.

II. Mr. Woldu's Injuries "Arose Out Of" His Employment

An injury arises out of employment where there is a causal connection between the injury and "conditions under which the work was required to be performed." *Mulready v.*

Univ. Research Corp., 360 Md. 51, 55 (2000) (quoting *Weston-Dodson Co. v. Carl*, 156 Md. 535, 538 (1929)). When the action leading to the injury is incidental to employment, Maryland uses the "positional-risk test," wherein "an injury arises out of employment if it would not have occurred if the employee's job had not required him to be in the place where he was injured." *Id.* at 59 (quoting *Olinger Constr. Co. v. Mosbey*, 427 N.E.2d 910, 913 (Ind. Ct. App. 1981)); *see also Schwan Food Co.*, 241 Md. App. at 651.

Where the injury results solely from an idiopathic condition, the injury cannot be said to arise out of the employment, and therefore will not be compensable. *CAM Constr. Co., Inc. v. Beccio*, 92 Md. App. 452, 463 (1992). However, the injury may be compensable where the employment "contributes to the risk or aggravates the injury." *Youngblud v. Fallston Supply Co., Inc.*, 180 Md. App. 389, 403–04 (2008) (quoting *Beccio*, 92 Md. App. at 455 n.2). This may occur when the employment "precipitated the effects of the condition by strain or trauma." *Id.* at 406 (quoting *Beccio*, 92 Md. App. at 463).

Montgomery County cites *Youngblud* in arguing that Mr. Woldu's injury did not arise out of his employment. In *Youngblud*, the claimant experienced a hypoglycemic episode caused by his diabetes. *Id.* at 395. Feeling lightheaded, Youngblud "decided to go downstairs and outside to get some air before eating lunch." *Id.* He fell down the stairs, losing consciousness. *Id.* "At trial, there was 'no evidence of any defects or abnormalities in the carpeting on the stairs or any defects, abnormalities, or unusual condition on the stairs themselves,' at the time of the fall." *Id.* at 396. The trial court concluded that Youngblud's injuries did not arise out of his employment because the fall was caused by diabetes-induced hypoglycemia, not by a hazard of employment. *Id.* at 406–07. The trial

court specifically determined that "there was nothing about the condition of the staircase or the lighting or the carpeting[] that contributed to the fall." *Id.* at 407. This Court held that the trial court's findings were not clearly erroneous and affirmed the ruling that Youngblud's injuries did not arise out of his employment. *Id.* at 407–08.

We understand the County's reliance on *Youngblud* to support its argument that Mr. Woldu's condition was idiopathic and, consequently, his employment did not contribute to his injury. But *Youngblud* is distinguishable. Youngblud's fall was caused solely by a hypoglycemic attack related to his diabetes, not by some aspect of his employment. *Id.* at 406–07. The fact that he happened to be at the top of the stairs at his workplace when the injury occurred was not a "peculiarity" of his employment. *Id.* at 407. Here, on the other hand, there was competent testimony that Mr. Woldu's exercises during a mandatory break contributed to his aneurysm rupture and subsequent injury.

A more apt case is *J. Norman Geipe, Inc. v. Collett*, 172 Md. 165 (1937). In that case, Collett, while driving a truck for his employer, suffered a stroke when he attempted to avoid hitting a man who jumped off the back of a truck in front of him. *Id.* at 167–68. Prior to this incident, Collett "had high blood pressure and hardening of the arteries, of which he was unaware, and which might have not produced any disabling result for years[.]" *Id.* at 168. The Court of Appeals examined whether the injury arose out of Collett's employment. *Id.* The Court noted that if Collett had suffered a stroke "while napping and resting" or "uneventfully driving," the injury "would have been a natural and probable result of his impaired physical health" and therefore not compensable. *Id.* at 169–70. The Court, however, concluded that Collett's injury arose out of his employment

because the "excitement" Collett experienced to avoid striking the pedestrian caused the stroke. *Id.* at 170. In concluding that the injury was "accidental" under the Act because it arose out of Collett's employment, the Court applied the following principles:

> So, if a servant, while at work, suffers or is made ill from natural causes, the state or condition is not accidental, since it is a natural result or consequence which is normal, and to be expected. If, however, there is a subsisting condition of illness or incapacity or physical disability which is caused, increased, or accelerated by some act or event coming by chance or happening fortuitously, then the requisite quality or condition of the injury will exist so as to make it accidental.

Id. at 168–69; *accord Watson v. Grimm*, 200 Md. 461, 465 (1952) ("The Workmen's Compensation Act imposes liability upon the employer only where there is a causal connection between the accidental injury and the employment, a connection substantially contributory, though it need not be the sole or proximate cause." (citing *Cudahy Packing Co. of Neb. v. Parramore*, 263 U.S. 418 (1923))).

Applying these principles, we conclude that the circuit court correctly determined that Mr. Woldu's injury arose out of his employment. The court expressly found that Mr. Woldu's exercises, "while not specifically required by RideOn, [were] sufficiently reasonable and necessarily incident to his employment." The court further found that the ten-minute break was mutually beneficial to Mr. Woldu and the County as it provided "respite to loosen tight muscles and release stress." This, in turn, would promote general wellness and allow Mr. Woldu "to better interact with the riding public." Finally, the court relied on Dr. London's testimony that Mr. Woldu's exercises causally contributed to the

aneurysm rupture.[4] That determination is amply supported by the record. Because the aneurysm rupture was "caused, increased, or accelerated" by the exercises encouraged by the County, the injury arose out of his employment and is compensable. *Collett*, 172 Md. at 169.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] Under the "Standard of Review" section of its brief, the County posits that Dr. London "gave no factual basis for his opinion that exercises caused [Mr. Woldu's] aneurysm." We note that the County makes no substantive argument in its brief related to the sufficiency of Dr. London's causation opinion. We further note that the County did not interpose any objection to Dr. London's causation testimony. Accordingly, any challenge to that part of Dr. London's testimony is waived. *See Terumo Med. Corp. v. Greenway*, 171 Md. App. 617, 624 (2006).