

IDIOPATHIC INJURIES

What the Hell Just Happened?

Roland C. Cafaro

CAFARO LAW OFFICES, s.c.

826 North Plankinton Avenue

Suite 401

Milwaukee, WI 53203

Telephone 414/271-0100

Facsimile 414/271-0109

CONDITIONS OF LIABILITY

- Conditions of Liability Established by § 102.03, *Wis. Stats.*
- § 102.03(1) provides: Liability under this chapter shall exist against an employer only where the following conditions concur:
 - (a) Where the employee sustains an injury.
 - (c)1. Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment.
 - (c)2. Any employee going to and from his or her employment in the ordinary and usual way, **while on the premises of the employer**, or while in the immediate vicinity of those premises if the injury results from an occurrence on the premises; any employee going between an employer's designated parking lot and the employer's work premises while on a direct route and in the ordinary and usual way;...[edit: language pertaining to volunteer fire fighters, emergency medical responders, emergency medical services practitioners, rescue squad members, or diving team members]...is performing service growing out of and incidental to employment.
 - (e) Where the accident or disease-causing injury arises out of the employee's employment.

POSITIONAL RISK DOCTRINE

- Wisconsin adheres to the “positional risk doctrine” which provides that liability will be found when the obligation or circumstances of the employment place an employee in the particular location where, and at the particular time when, the employee is injured by a force not solely personal. *Allied Mfg., Inc. v. DILHR*, 45 Wis. 2d 563 (1970).
 - An **idiopathic injury**, or one due to a personal condition not caused or aggravated by employment, is not compensable. *Peterson v. Industrial Commission*, 269 Wis. 44, 49 (1955).
 - Similarly, an "unexplained injury," or one attributable to neither an idiopathic/personal cause nor a cause related to employment, is not compensable even it occurs while a worker is performing services. *Briggs & Stratton v. ILHR Department*, 43 Wis. 2d 398, 404 (1969).

WHAT DOES “IDIOPATHIC” EVEN MEAN?

- Derivation: *Idiopathic* joins the combining form *idio-* (from Greek *idios*, meaning "one's own" or "private") with *-pathic* (from Greek *pathos*, meaning “experience, misfortune, emotion, condition” which itself comes the Greek *path-* meaning “experience, undergo, suffer”).
- Merriam-Webster Definition: (1) Arising spontaneously or from an obscure or unknown cause; (2) peculiar to the individual.
- Cleveland Clinic Definition: A condition with an unknown cause.
- Black’s Law Dictionary Definition: A morbid state or condition not preceded or occasioned by any other disease. *Christ v. Pacific Mutual Life Ins. Co.*, 231 Ill. App. 439 (1923)

WHAT DOES “IDIOPATHIC” MEAN IN WISCONSIN WORKER’S COMPENSATION?

- *Peterson v. Industrial Commission*, 269 Wis. 44 (1955), defined an idiopathic injury as an injury due to a personal condition not caused or aggravated by employment.
- *Nielsen v. Industrial Comm*, 14 Wis. 2d 112 (1961), established that “unexplained” injuries – or those that cannot be linked to any hazard or danger of employment – are not compensable.
- *Briggs & Stratton Corp. v. DILHR*, 43 Wis. 2d 398 (1969), combined the two foregoing concepts and stated that if a fall cannot be causally connected to any hazard or zone of danger associated with the work environment and is caused by a force solely personal to the employee, it is characterized as idiopathic and does not result in liability.
 - *Briggs & Stratton* actually dealt with an “unexplained injury” that occurred when a worker fell while slowly walking down an aisle in the employer's plant. She testified she fell when her right foot stopped because of something in the aisle, but she could not identify the object which caused her to fall. Another worker testified he checked the floor after the fall and did not observe anything in the aisle she could have slipped upon. However, along the sides of the aisle were machines that scattered aluminum chips and the worker testified that, after the fall, her arms were covered with oil and dirt and her shoes had oil on them. The LIRC noted there was no evidence the worker's fall was idiopathic, since she had no history of fainting or seizures. Rather, the worker knew how she fell, where she fell, and what caused her fall but could not identify the precise object that stopped her foot. The LIRC inferred from evidence of a fracture that extensive trauma was involved and found the claim compensable. The Supreme Court upheld that finding noting that other evidence in the record supported the LIRC’s inference.

The main takeaway: An unexplained injury is not necessarily an idiopathic injury.

WHAT DOES “IDIOPATHIC” MEAN IN WISCONSIN WORKER’S COMPENSATION?

An idiopathic injury is one due to a force solely personal to the injured worker.

- *Kraynick v. Industrial Comm.*, 34 Wis. 2d 107 (1967) – Employee was standing at the foot of a stairway when he gasped for air, his body went rigid, and he fell back with no effort to break his fall. He convulsed and his eyes rolled. The fall caused a laceration to his scalp and a clot in his brain was removed by surgery. He died 18 days later. Applicant was never able to testify why he fell. The LIRC held – and the Supreme Court affirmed – that the applicant failed to prove his injury was not idiopathic. The fact he landed on a hard concrete floor did not make the claim compensable because a hard level floor is not a zone of danger.
- *Dumesic v. Carmax*, WC Claim No. 2007-030617 (LIRC Nov. 9, 2009) - An idiopathic fall may occur when a person simply falls while walking on an unslippery, level surface at work, not due to any hazard or danger of employment, but instead due to a disease, physical disability, or condition personal to the injured worker. For example, if person with diabetes falls to the floor at work because of an insulin reaction unrelated to work duties and is injured in the fall, the fall may be regarded as idiopathic, or due to a solely personal force, and would not be compensable. Such an accident or fall, even though occurring while a worker is performing services for an employer, does not arise out of employment. Citing *Briggs & Stratton*

WHAT DOES “IDIOPATHIC” MEAN IN WISCONSIN WORKER’S COMPENSATION?

Examples of Idiopathic Injuries

- *Bauer v. Ambassador Enterprises*, WC Claim No. 2010-01294 (LIRC July 26, 2012) – Video showed the applicant beginning to slump while standing still and, falling to the ground without any reaction or attempts to minimize the damage of the fall. There was nothing to support a finding of a cause related to the employment given this evidence.
- *Amelia Soto v. City of Madison*, WC Claim No. 2010-006015 (LIRC May 24, 2012) – Vasovagal syncope did not arise out of employment but was instead unique to the applicant who was a vegan, “ultra athletic” and did not hydrate herself.
- *Annette Gilliam v. Sargento Foods*, WC Claim No. 2011009541 (LIRC March 29, 2019) - The LIRC found that the applicant’s earliest reports of injury did not reference any traumatic injury or even stepping on uneven surface. Rather, The Injury Report signed by the applicant on the date of the injury indicated she “was walking from front of line to scraping room around 0400 when I noticed a little pain in my left ankle.” An ultrasound on the same day objectively showed a fluid-filled cyst, but the anterior talofibular ligament was visualized and the fibers were uniform and intact. There were no tears in the ligamentous structure. The credible evidence did not show that she “hit the drain” or twisted or rolled her ankle in anyway, or that the applicant slipped or fell; it merely showed that she felt a little pain in her ankle while she was walking across a dry, unobstructed floor.

Poll Question #1

Is this compensable?

- A. Yes
- B. No

WHAT CONSTITUTES A HAZARD OR ZONE OF DANGER?

- *Pamela Johnson v. United Health Care Services*, WC Claim No. 2008-18622 (LIRC May 26, 2010), the LIRC held that **roughness of asphalt** constituted a zone of danger even though the applicant could not explain what caused her to fall in the employer's parking lot. In awarding compensation, the LIRC noted that the evidence established the applicant had clearly "tripped" and therefore inferred from the evidence that the trip could be explained by her foot either catching on the rough asphalt surface or by stepping on a foreign object.
- *Pattengale v. West Allis Memorial Hospital*, WC Claim No. 2010-021311 (LIRC July 26, 2012), the LIRC found that a trip sustained while crossing an elevator threshold was compensable even though the injured worker could not identify anything that specifically caused her to trip. The LIRC inferred from the evidence that the elevator threshold presented a zone of danger due to a **gap in the flooring and differing floor surfaces**.
- *Klatt v. ConAgra Foods*, WC Claim No. 2008-035969, (LIRC May 28, 2009). A **slippery floor** constitutes a zone of special danger.
- *Harold Gruetzmacher v. Pacon Corp.*, WC Claim No. 1987028291 (LIRC March 20, 1991) – **Steps and stairs** – even small steps – are considered a zone of danger.
- *David Robinson v. Storo Enso North America*, WC Claim No. 2003-029040 (LIRC May 18, 2005) – Simply **turning a corner** while walking on a flat floor to respond to a machine presented a hazard associated with employment.

Poll Question #2

Is this compensable?

- A. Yes
- B. No



Poll Question #3

Is this compensable?

- A. Yes
- B. No



Poll Question #4

Is this compensable?

- A. Yes
- B. No

2021-Oct-25 01:37:07.123 PM (CDT)



CMH - 1st - ED Back Hallway

Poll Question #5

Is this compensable?

- A. Yes
- B. No

WHAT SHOULD YOU DO?

- Ascertain the acts
- Get medical records
- Get Witness Statements
- Get video