

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2017-0713, Appeal of Judith Sirles, the court on November 2, 2018, issued the following order:

The petitioner, Judith Sirles (claimant), appeals a decision of the New Hampshire Compensation Appeals Board (board) denying her request for reimbursement for medical treatment and workers' compensation benefits. The parties dispute whether her injury arose out of her employment as required by RSA 281-A:2, XI (2010). We vacate and remand.

The record shows that the claimant sustained an injury on October 12, 2016, while working for the respondent, Granite State Independent Living (employer), as a personal care service representative. She was working full-time in the home of a disabled man in Gilford, where she cleaned, ran errands, and "constantly walked up and down stairs." As part of her job duties, she frequently entered the garage to carry out the trash and retrieve cleaning products and household supplies. There were two steps between the house and garage. On October 12, 2016, she was returning into the house, after taking out the trash, when her left leg slipped on the top step, and she fell forward and injured her right hand. She was not carrying anything, and the stairs were not wet. She notified her employer and sought medical attention. She was found to have fractured the small finger of her right hand. She lost no time from work except for medical appointments.

The claimant sought reimbursement for her medical expenses and workers' compensation benefits. The employer determined that there was no causal relationship between the injury and the employment and denied the claim. A department of labor hearings officer upheld the employer's decision, and the claimant appealed to the board. After a hearing, the board upheld the hearing officer's decision and denied the claimant's motion for reconsideration. This appeal followed.

We will not disturb the board's decision absent an error of law unless, by a clear preponderance of the evidence, we find it to be unjust or unreasonable. Appeal of Desmarais, 170 N.H. 134, 136 (2017); see RSA 541:13 (2007). "The [board's] factual findings are prima facie lawful and reasonable." Appeal of Dean Foods, 158 N.H. 467, 471 (2009). Its findings will not be disturbed unless they are unsupported by evidence in the record. Appeal of Kehoe, 141 N.H. 412, 415 (1996). As the appealing party, the claimant bears the burden of showing that the board's decision was erroneous. Appeal of Redimix Cos., 158 N.H. 494, 496 (2009).

To support a claim for workers' compensation benefits, the employee must show that her injuries arose "out of and in the course of [her] employment." RSA 281-A:2, XI. The phrase "arising out of" employment refers to the causal connection between the injury and risks of employment, and requires proof that the injury "resulted from a risk created by the employment." Murphy v. Town of Atkinson, 128 N.H. 641, 645 (1986). To determine whether an injury arises out of employment, we have recognized four types of injury-causing risks commonly faced by an employee at work: "(1) risks directly associated with employment; (2) risks personal to the claimant; (3) mixed risks; and (4) neutral risks." Appeal of Margeson, 162 N.H. 273, 277 (2011). The board concluded that the claimant's injury resulted from a neutral risk. On appeal, the claimant argues that her injury resulted from an employment-related risk.

"Employment-related risks include all the obvious kinds of injuries that one thinks of at once as industrial injuries and are almost always compensable." Id. (brackets and quotations omitted). "Typically, a slip and fall is only attributable to an employment-related risk if it results from tripping on a defect or falling on an uneven or slippery surface on an employer's premises." Id. The claimant asserts that the stairs were defective because they violated the applicable residential building code in three respects: (1) the bottom riser was approximately one-half inch higher than allowed by code; (2) the deviation between riser heights was approximately one-half inch greater than allowed by code; and (3) the tread of the top stair did not have a nosing as required by code. However, even if we assume that the stairs were defective, the claimant has provided no evidence to show that any such defect caused her to fall. See Appeal of Margeson, 162 N.H. at 277 (requiring causal connection between defect and fall). On the contrary, she testified that she "just watched [her] whole foot slip off" the top step. Accordingly, we reject the claimant's argument that the fall resulted from an employment-related risk.

Personal risks result solely from an employee's personal condition, and mixed risks involve a combination of a personal risk and an employment risk. Id. at 277-78. Neither type of risk applies here because there is no evidence that the fall resulted from a personal condition of the claimant.

The fourth category of risks, "neutral risks," includes cases in which "the cause itself, or the character of the cause, is simply unknown." Id. (quotation omitted). "An unexplained fall is considered a neutral risk." Id. Although the claimant argues that she explained her fall by describing that her foot slipped off the step, the reason for her slip remains unexplained; thus, we conclude that her injury resulted from a neutral risk. In Appeal of Margeson, we adopted the "increased-risk test" to determine whether an employee may recover from an injury resulting from a neutral risk. Id. at 283. Under the increased-risk test, an employee may recover if her injury results from "a risk greater than that to which the general public is exposed." Id. (quotation

omitted). “[E]ven if the risk faced by the employee is not qualitatively peculiar to the employment, the injury may be compensable as long as [she] faces an increased quantity of a risk.” Id. (quotation omitted).

Under the increased-risk test, an employee who falls on stairs may be entitled to compensation under certain circumstances. Id. at 284. “For example, an employee who must use stairs more frequently than a member of the general public as part of [her] job faces an increased risk of injury.” Id. “Additionally, stairs of an unusual height or the manner in which an employee is required to perform [her] job may also increase the risk of injury.” Id. Here, the board found that, as part of her job duties, the claimant “constantly walked up and down stairs” and “went into the garage frequently to retrieve cleaning products and household supplies and to deposit the trash.” There was also evidence that the stairs were of an unusual height and noncompliant with the applicable building code. Although the board concluded that “[t]his is clearly a case of a neutral risk,” it failed to apply the increased-risk test we adopted in Appeal of Margeson to determine whether the injury is compensable. Accordingly, we remand for the board to apply the increased-risk test. In light of our decision, we need not address the inconsistencies in the board’s order noted in the claimant’s brief.

Vacated and remanded.

HICKS, BASSETT, and DONOVAN, JJ., concurred.

**Eileen Fox,
Clerk**