

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

KRISTIE SPIES,

HF No. 88, 2020/21

Claimant,

v.

DECISION

STATE AUTO INSURANCE,

Insurer,

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. The case was heard by Michelle M. Faw, Administrative Law Judge, on January 28, 2022. Claimant, Kristie Spies, was present and represented by Liam Culhane of Turbak Law Office, P.C. The Insurer, State Auto Insurance was represented by J.G. Shultz of Woods, Fuller, Shultz & Smith, P.C.

Facts

1. On August 12, 2020, Kristie Spies (Spies) was working at Meyer Insurance in Watertown, South Dakota, which was at all times pertinent, insured for workers' compensation purposes by State Auto Insurance (State Auto).
 - a. While exiting her office and talking on her cell phone to another employee, Spies fell and was injured.
 - b. Spies' supervisor, Lisa Peterson (Peterson), took her directly to Brown Clinic in Watertown. An x-ray revealed that Spies had a broken arm at the shoulder joint. Peterson assisted Spies with submitting a workers' compensation claim to State Auto.

- c. Brown Clinic records state that Spies said she fell at work, and her ankle gave out while she was walking.
 - d. Spies was seen by Glacial Lakes Orthopedics whose records reflect that Spies' injury occurred when she slipped and fell while at work.
2. On August 13 or 14, 2020, State Auto's adjuster, Aquilla Collins (Collins), called Peterson regarding Spies' fall. Peterson told Collins that it was not certain but likely that Spies fell because she caught her foot on the door jamb or on the transition between her office and hallway.
3. On August 14, 2020, State Auto denied Spies' claim for workers' compensation benefits because she had not established that the injury arose out of and in the course of her employment. State Auto also found that there were no defects in the flooring or explained cause of the fall.
4. On August 28, 2020, Spies had a follow-up appointment with the Orthopedic Institute. The notes for that appointment state that Spies suffered a fall 6 days ago, and that she tripped coming through a doorway at her office and landed with her right shoulder abducted.
5. On February 8, 2021, Spies submitted a Petition for Hearing to the Department of Labor & Regulation.
6. Spies' claim for workers' compensation benefits totals \$4,467.55 plus interest.

Analysis

The issue before the Department is whether Spies' injury arose out of her employment.

In order for an injury to "arise out of" the employment, the employee must show that there is a "causal connection between the injury and the employment." *Id.*

¶ 8 (quoting *Canal Insurance Co. v. Abraham*, 1999 SD 90, ¶ 12, 598 N.W.2d 512, 516). The employment need not be the direct or the proximate cause of the injury, rather it is sufficient if “the accident had its origin in the hazard to which the employment exposed the employee while doing [her] work.” *Id.* (quoting *Canal Insurance Co.*, 1999 SD 90, ¶ 12, 598 N.W.2d at 516). The injury “arose out of” the employment if: 1) the employment contributes to causing the injury; 2) the activity is one in which the employee might reasonably engage; or 3) the activity brings about the disability upon which compensation is based. *Id.* (citing *Grauel*, 2000 SD 145, ¶ 12, 619 N.W.2d at 263).

Mudlin v. Hills Materials Co., 2005 S.D. 64, ¶11, 698 N.W.2d 67, 71-72

State Auto asserts that Spies has not proven that her injury was the result of a hazard to which her employment exposed her as there was no defect in the carpet or door jamb to cause a fall. State Auto further asserts that Spies did not know how she fell, and the record indicates five different potential causes for her fall including her left ankle giving out, slip and fall, trip and fall, and catching her toe or the toe of her sandal on the transition between the office and hallway. State Auto argues that the inconsistency regarding the circumstances of her fall complicates the issue of whether the injury arose out of her employment.

Spies argues that why she fell is irrelevant and the pertinent fact is that she fell as she left her office to go to the employee restroom. She asserts that the purpose of the workers’ compensation system is to provide “relief based on the fact of employment, practically automatic and certain, expeditious and independent of proof of fault...” *Keil v. Nelson*, 355 N.W.2d 525, 530 (SD 1984). Additionally, she argues that her injury meets the “arising out of” requirements provided by the Court in *Mudlin*, because leaving her office to go to the restroom and speaking to other employees on a cellphone are activities “which the employee might reasonably engage” *Id.*

The Department agrees that Spies' injury arose out of her employment. The South Dakota Supreme Court has provided that

the definition of "'arising out of' and 'incident to' employment [includes] those activities necessary to the continuation of an employee's duties, e.g., those activities 'necessary to [the employee's] health and comfort.' *Id.* Examples of such activities include eating, resting, smoking or using bathroom facilities. Therefore, unless the employee 'steps aside' from their employment for personal reasons, they are allowed compensation for injuries they receive."

Norton v. Deuel Sch. Dist. No. 19-4, 2004 S.D. 6, ¶ 21, 674 N.W.2d 518, 523 (citations omitted).

Spies was leaving her office to visit the restroom. She was also talking to a coworker on her cellphone. Both activities are ones in which she might reasonably engage as an employee. "An employee [will be] considered in the course of the employment if he is doing something that is either naturally or incidentally related to his employment or which he is either expressly or impliedly authorized to do by the contract or nature of the employment." *Petrik v. JJ Concrete, Inc.*, 2015 SD 39, ¶14, 865 N.W.2d 133, 138. (citations omitted).

In *Petrik*, Petrik played a prank on a coworker, ran away, jumped across a trench, and broke his ankle. Before the Department, JJ Concrete, Inc. argued that Petrik's injury did not arise out of and was not in the course of his employment, because horseplay was not allowed. Petrik argued that his horseplay was brief, and it arose out of his employment as the frequent lulls in the workday made it expected. The Department held that the injury arose out of his employment. The Court affirmed stating that "[i]t is well-settled in this State that our workers' compensation laws are 'remedial in character and entitled to a liberal construction.'" *Id.* at ¶11. The Court further held that Petrik's running around was not directly connected with the work he did for JJ Concrete, Inc., but that his employment did contribute to his injury as playing a prank on his

coworker during the idle time was one in which an employee might reasonably engage. Thus “the injury arose out of the employment because it had its origin in the hazard exposed by the employment” *Id.*

Conclusion

Spies has shown that walking out of her office to go to the restroom and talking on her cellphone are activities she would reasonably be expected to engage in as an employee. As these activities are ones that she was either expressly or impliedly authorized to do by the nature of her employment, therefore, her injury while engaging in these activities arose out of her employment.

Spies shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. State Auto Insurance shall have an additional twenty (20) days from the date of receipt of Spies’ Proposed Findings and Conclusions to submit objections thereto and/or to submit their own proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Spies shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 23rd day of May, 2022.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge