

JUDINE SIMMS, Employee,
v.
STATE OF DELAWARE, Employer.

**INDUSTRIAL ACCIDENT BOARD OF THE
STATE OF DELAWARE**

Hearing No. 1340237

**Mail Date: April 6, 2010
April 5, 2010**

**DECISION ON PETITION TO DETERMINE
COMPENSATION DUE**

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on March 22, 2010, in a Hearing Room of the Board, in New Castle County, Delaware.

PRESENT:

JOHN DANIELLO

ALICE M. MITCHELL

Julie Pezzner, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Walt F. Schmittinger, Attorney for the Employee
William R. Baker, Jr., Attorney for the Employer

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**NATURE AND STAGE OF THE
PROCEEDINGS**

On September 11, 2009, Ms. Judine Simms ("Claimant") filed an initial Petition to Determine Compensation Due, alleging that on July 16, 2009 she aggravated a pre-existing back condition when she fainted at work while employed by the State of Delaware ("Employer"). She seeks payment of medical bills in the amount of \$8,007.20¹ and payment of temporary total disability benefits from July 16, 2009 until

September 28, 2009. Employer disputes the causal relationship of Claimant's injury to her employment.

A hearing was held on Claimant's petition on March 22, 2010. This is the Board's decision on the merits.

SUMMARY OF THE EVIDENCE

Claimant testified on her own behalf. She is forty-three years old. At the time of the injury, she was working as a supervisor of the night custodial staff at the Appoquinimink School District. She was earning \$15.75 per hour and worked forty hours per week. She testified that approximately an hour after her shift began², she went to the cafeteria ladies room. She stated that the bathroom was very hot and there was no air conditioning in the bathroom. She was constipated and in great pain. While she was using the bathroom, she started to sweat profusely. She walked to the sink to splash her face with water and then fainted. When she gained consciousness, Claimant could not feel her legs and was unable to stand. She remained lying on the bathroom floor and used her cell phone to call a co-worker for help. The nurse found her and called 911.

Claimant testified that when she fainted, she aggravated a pre-existing back condition. Claimant testified about her medical treatment. She was placed on temporary total disability

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from the day of the injury until September 28, 2009 at which time she returned to work without restrictions. Claimant acknowledged that she reported her mechanism of injury differently to various doctors. She could not explain why such accounts were different.

Claimant added that the previous work day was atypically physically demanding. She had to mop an area by herself and such area is supposed to be cleaned by two people. When she came

home that night she was very stressed and exhausted.

Dr. Kartik Swaminathan who is board certified in physical medicine and rehabilitation testified by deposition to a reasonable degree of medical probability on behalf of Claimant. He had been treating Claimant for her pre-existing low back condition that commenced in April 2007. He testified that Claimant aggravated her pre-existing low back condition when she fainted at work. He started treating Claimant for the aggravation on July 23, 2009. He placed Claimant on temporary total disability until September 24, 2009 as a result of her injuries; thereafter, he released Claimant to return to work without restrictions.

Dr. Swaminathan testified about Claimant's medical treatment and about Claimant's complaints throughout the course of medical treatment. He detailed his findings upon examination. He initially diagnosed Claimant as having an acute syncopal episode likely resulting from heat stroke and as having an aggravation of her low back injury with new radicular symptoms. He described a syncopal episode as a loss of consciousness typically accompanied by confusion or memory loss secondary to a loss of or a drop in blood pressure that is sudden and precipitous.

Dr. Swaminathan initially surmised that Claimant's syncopal episode was due to a heat stroke because Claimant reported working in a bathtub inside a school in heated conditions. Claimant was sweating profusely when she fainted. However, he acknowledged that Claimant

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presented a different account of events to the various doctors who treated her. Despite the variations of Claimant's reported account of events, Dr. Swaminathan emphasized that the focus should not be on exactly what Claimant was doing when she fainted. Instead, the point is: that Claimant was working; that Claimant had her period; that it was a hot day; that Claimant was

constipated; that Claimant went to the ladies room; that Claimant strained to relieve herself; and that Claimant had a drop in blood pressure causing her to faint. Dr. Swaminathan continued that a similar event had not previously happened. She did not syncope at home. She did not syncope as soon as she arrived at work. Instead, after exerting herself in her physically demanding position at Employer, Claimant went to the ladies room, strained while relieving herself and fainted. He opined that the culmination of factors caused her to syncope and therefore, her aggravation is causally related to her work. He added that while other doctors diagnosed Claimant as having vasodepressor syncope, vasodepressor syncope typically happens repeatedly and this is the first time this has happened to Claimant.

Ms. Loretta Newsom, a registered nurse for Employer, testified by deposition on behalf of Employer. She testified that on July 16, 2009 Ms. Catherine Velazquez, a custodian, came to her office and informed her that Claimant called Ms. Velazquez via cell phone and requested help. Ms. Newsom went to the ladies room and found Claimant lying face down on the floor. Claimant appeared diaphoretic and was complaining of being in great pain. Claimant was scared. Claimant stated that she was bleeding profusely from her period and was also bleeding from her rectum. Claimant had taken Vicodin that day.

Ms. Newsom testified that the air conditioner was functioning in the ladies room. Claimant did not mention that she was hot.

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Dr. Alan Fink who is board certified in neurology testified by deposition to a reasonable degree of medical probability on behalf of Employer. He reviewed pertinent medical records and examined Claimant on November 20, 2009. At the time he examined Claimant she was taking Norco and Percocet, both of which cause constipation.

Claimant reported to Dr. Fink that she had been working for approximately an hour from

11:00 a.m. until noon when she excused herself to go to the bathroom. She stated that she was sitting on a toilet and evacuated both her bowel and bladder and then found herself on the floor after having fainted. Claimant stated she was found by a custodian who called the school nurse. The nurse called 911 and Claimant was transferred by ambulance to Christiana Hospital.

Dr. Fink testified about the different account of events. According to the Emergency Room notes, Claimant reported being constipated for two days. She was straining with a bowel movement for forty-five minutes at work and then had a syncopal episode. On July 20, 2009, Claimant submitted to Employer a written statement on which Claimant stated that she proceeded to the bathroom in the cafeteria at 10:45 a.m. and was bleeding, dehydrated and asthmatic dizzy. At some point Claimant passed out and ended up on the floor with sweat all over her body.

Dr. Fink noted that Claimant's written statement did not indicate that she had been sitting on a toilet but that logistically the time would be consistent with the hospital record that Claimant had been straining for forty-five minutes with a bowel movement. Dr. Fink testified that to Dr. Penny on July 24, 2009, Claimant reported having eaten breakfast fifteen minutes prior and having constipation. Claimant stated she urinated but did not have a bowel movement. She became diaphoretic and awakened on the floor forty-five minutes later. Dr. Fink testified

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that only two doctors, one of whom is Dr. Swaminathan, indicated that Claimant's syncopal episode was heat related.

Dr. Fink opined that Claimant had micturition or defecation syncope, a subcategory of a vasovagal episode. Dr. Fink explained that micturition or defecation syncope is a well known condition where patients have a particular propensity to have their heart rates slow down to

the point that they faint when straining to have a bowel movement. Such event can happen any time the person has a bowel movement. Dr. Fink explained that in this case, Claimant was constipated most likely from the narcotic medication and the strain from trying to evacuate a bowel movement caused her heart rate to slow, caused her blood pressure to drop, caused a lack of blood to her brain and ultimately caused her to faint. Dr. Fink concluded that the workplace had no causal relation to her syncope event; it could have happened anywhere. Rather, it is related to Claimant's chemical makeup³ and to Claimant straining for two to three hours.⁴

Dr. Fink testified that there is no indication Claimant ever experienced a similar event prior to or subsequent to her syncope event. His testimony conflicted regarding how often someone having the propensity for this condition will experience it. At one point he stated that it would be unusual for such person to be forty-two years old and experience it for the first time, At another point in his testimony he stated that it would not be uncommon for Claimant to have not experienced defecation syncope before; such event is not something that would regularly occur. He added that most people will experience it two to three times throughout their lives.

Dr. Fink disputed Dr. Swaminathan's opinion that heat played a factor in causing Claimant to syncope. He acknowledged that if Claimant's work environment was hot, then heat

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would be a significant factor. He indicated similarly in his notes.⁵ Dr. Fink testified however, that Claimant's work environment was air conditioned so heat did not play a factor in this case. Dr. Fink also distinguished Claimant's syncopal event from a heat stroke.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In order to be compensable, the injury must arise out of or be in the course of employment. 19

Del. C. § 2304. As this is the Claimant's Petition, Claimant has the burden to prove by a preponderance of the evidence that the injury was caused by the work accident. *Goicuria v. Kauffman's Furniture*, Del. Super., C.A. No. 97A-03-005, Terry, J., 1997 WL 817889 at *2 (Oct. 30, 1997), *aff'd*, 706 A.2d 26 (Del. 1998). The "but for" definition of proximate cause that is used in the area of tort law is the applicable standard for causation. *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. Supr.1992). Hence, the Claimant must prove that "the injury would not have occurred but for the accident. The accident need not be the sole cause or even a substantial cause of the injury. If the accident provides the 'setting' or 'trigger', causation is satisfied for purposes of compensability." *Reese*, 619 A.2d at 910.

It is well established in Delaware case law that injuries sustained in an idiopathic fall can be found compensable if the employment contributes to the harm, such as by triggering the idiopathic condition. "A preexisting disease or infirmity, whether overt or latent, does not disqualify a claim for workers' compensation if the employment aggravated, accelerated, or in combination with the infirmity produced the disability." *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992). An employer takes the employee as it finds him. *Reese*, 619 A.2d at 910. "If the injury serves to produce a further injurious result by precipitating or accelerating a previous, dormant condition, a causal connection can be said to have been established." *Reese*,

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619 A.2d at 910. On the other hand, Delaware case law has also recognized that idiopathic falls are not compensable when the reason for the fall is due to a medical condition unrelated to employment and not triggered by something related to employment. *Lecates v. Harrison House of Delmar*, Del. Super., C.A. No. 89A-AP1, Lee, J (September 28, 1990).

In this case, Claimant's medical expert, Dr. Swaminathan, initially contended that Claimant

fainted as a result of a heat stroke. The Board finds that Claimant did not syncope because of a heat stroke but rather fainted from straining to relieve herself. As an alternative, Dr. Swaminathan proffered the opinion that it was a culmination of factors causing Claimant to syncope: that Claimant was working; that Claimant had her period; that it was a hot day; that Claimant was constipated; that Claimant went to the ladies room; that Claimant strained to relieve herself; and that Claimant had a drop in blood pressure causing her to faint. He added that the event occurred at work after she had been working for an hour; he deduced that work must have played a factor in causing Claimant to syncope. On the other hand, Employer contends that Claimant fainted as a result of Claimant's propensity to syncope while defecating and/or seeing blood and that such event had no relation to her work. In other words, Employer contends that the syncopal event could have happened anywhere; the fact it happened at work is incidental and due to a medical condition (or propensity) unrelated to employment and not triggered by something related to employment.

Based on the evidence that is incorporated herein, the Board accepts Employer's contention that the event could have happened anywhere and is not causally related to Claimant's employment. The Board accepts Dr. Fink's opinion over Dr. Swaminathan's opinion. The Board finds Dr. Fink to be more credible. The Board does not believe that something about or related to work triggered Claimant to syncope.

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The Board rejects Claimant's contention that heated work conditions played a factor in causing her to faint. Claimant appeared very confused about the events of the day, even at the hearing. She initially testified that she went to the ladies room as soon as she arrived at work but subsequently testified that she worked for one hour before she went to the ladies room. Claimant's account of events was inconsistent among the various people to whom she reported. Her report to Dr. Swaminathan was significantly

different than to other doctors, to Ms. Newsom, and to Employer (*via* written statement). The medical testimony supports the fact that Claimant could be confused about events immediately preceding and/or succeeding the syncopal event.

On the other hand, Ms. Newsom appeared credible to the Board. She testified that the area was air conditioned; it was not hot. Furthermore, Claimant did not report to Ms. Newsom or to Employer in the written statement that heat played a factor in causing her to faint. Both medical experts acknowledged that profuse sweating can occur (as it did with Claimant) prior to fainting. The Board finds that Claimant most likely was hot because her sweating was a symptom that preceded fainting as opposed to being hot due to the temperature of the room. Claimant's confusion can account for the disparate testimony regarding the room temperature.

Since the Board finds that the room temperature did not play a factor, the remaining factors (excluding the fact that Claimant happened to be at work) that Dr. Swaminathan contends caused Claimant to faint are: Claimant's period; Claimant's constipation; and Claimant's straining to void. It is undisputed that such factors caused Claimant to faint. The Board finds that Claimant failed to meet her burden of proof that her work was an additional factor that caused her to faint. The Board agrees with Dr. Fink that the fact that it occurred at work is a coincidence. This event could have happened anywhere; the fact it happened at work is incidental and due to a medical condition (or propensity) unrelated to employment and not

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triggered by something related to employment. Therefore, the Board finds that Claimant's injury was not causally related to her employment and denies Claimant's Petition for Compensation Due.

STATEMENT OF THE DETERMINATION

For the reasons stated above, the Board denies Claimant's Petition to Determine Compensation Due.

IT IS SO ORDERED THIS 5th DAY OF APRIL, 2010.

INDUSTRIAL ACCIDENT BOARD

/s/ _____
JOHN DANIELLO

/s/ _____
ALICE M. MITCHELL

I, Julie Pezzner, Hearing Officer, hereby certify that the foregoing is a true and correct decision of the Industrial Accident Board.

/s/ _____

Mail Date: 4-6-10

/s/ _____
OWC Staff

Notes:

¹ This amount also includes reimbursement for mileage and out of pocket expenses.

² At one point in Claimant's testimony, she stated that she went to the ladies room at the beginning of her shift. Claimant's account of events was unclear.

³ Dr. Fink testified that a person is born with such propensity and it is a lifelong condition.

⁴ Dr. Fink testified that another cause of syncope is the sight of blood.

⁵ Dr. Fink stated in his written assessment, that the combination of it being a warm day and Claimant exerting herself played a role in Claimant's loss of consciousness
