FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-75

STEVEN SILBERBERG,

Appellant,

v.

PALM BEACH COUNTY SCHOOL BOARD and YORK RISK SERVICES GROUP,

Appellees.

On appeal from an order of the Office of the Judges of Compensation Claims.
Carol J. Stephenson, Judge.

Date of Accident: February 21, 2019.

February 16, 2022

TANENBAUM, J.

Steven Silberberg suffered injury from a fall in the classroom where he worked. He had been sitting, and his leg went numb just before he stood up. The sleeping leg led to a loss of balance and his falling over. The salient question for us is whether his fall is a compensable accident under Florida's Workers' Compensation Law. The judge of compensation claims ("JCC") denied compensability, concluding that Silberberg's resulting injury did not *arise out of* his work as a teacher, even though the fall occurred

while he was at work and performing work. We agree with that determination and affirm.

I.

Silberberg had a clear recollection of how his accident happened. As Silberberg explained, he taught in a program for students expelled for their involvement in severe incidents at their home schools. The students stayed in one classroom all day, and they were allowed to leave for lunch and special elective classes. Typically, Silberberg walked around his classroom to help individual students, and he also used a whiteboard to teach. He did not spend much time sitting while the students were in the classroom, because they had to be constantly monitored.

On the day of the accident, Silberberg was teaching six students, ranging from third to fifth grade, and he had two people assisting him in the classroom. Before dismissing his class for lunch, Silberberg took a seat in his usual chair at his usual desk to sit for five minutes or less. He described the chair as being similar to the rolling chair he was sitting in at his hearing before the JCC. There was nothing special or unusual about the desk, either.

Because the students had to be closely monitored, when the students were told to line up for lunch, Silberberg stood up from his chair and tried to take a step. When he did, he had no feeling in his left leg. His leg gave way, causing him to fall on the linoleum floor and break his left femur. The parties stipulated that Silberberg did not trip or stumble immediately before the fall, and that he did not strike the desk or any other work equipment as part of the fall.[1] No one assaulted him or pushed him.

[1] Silberberg did not claim that any of his work conditions, including the classroom floor, increased the risk of injury from the fall, or that the conditions aggravated the injury that he did suffer. *Cf. Duval Cnty. Sch. Bd. v. Golly*, 867 So. 2d 491, 494 (Fla. 1st DCA 2004) (requiring JCC to make "a particularized finding of" whether the concrete floor at work "created an increased risk of the injuries"

Dr. Jose Zuniga, who performed an independent medical exam ("IME") on behalf of the employer, testified that Silberberg reported occasional numbness in his left foot prior to the accident. Still, the numbness that Silberberg experienced when he fell at work "did not seem related to any major medical illness"; he did not have vascular disease, diabetes, sciatic nerve injury, or severe lower lumbar disc disease. The doctor concluded that the leg numbness that Silberberg experienced while sitting just before the fall was "most likely due to brief compression of the nerves for the left leg due to the sitting in one position."

According to Dr. Zuniga, Silberberg may have had some venous insufficiency that could give rise to an occasional tendency to experience a compressed nerve when sitting, and this might have explained why Silberberg's leg went numb. It appeared to Dr. Zuniga that Silberberg probably had "a benign condition"—Silberberg's leg could have fallen asleep sitting at any time, whether at work or at home—and "it's probably going to happen again if he sits in one position for a period of time." Dr. Zuniga added that he thought the fall occurred because Silberberg simply started to walk too soon after standing with a numb leg and "lost his balance."

Silberberg hired Dr. Robert Simon to perform his own IME. Dr. Simon reached the same conclusion: Silberberg "was sitting and his leg fell asleep because of compression of the nerve and most likely the vasculature, but either one led to his limb getting numb and weak." He also agreed that this is a very common phenomenon "that most people experience at least once in their life," and that it is something that could happen anywhere.

The JCC considered this evidence and the argument of counsel. In her final order, the JCC first noted that there was no dispute the accident happened in the course and scope of Silberberg's employment. Her task was to determine whether Silberberg's injury arose out of his work. The JCC concluded that "we know how the accident happened," so this was not an "unknown fall" case. She noted that both IME doctors agreed that

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sustained by the employee (quoting *Hernando Cnty. Sch. Bd. v. Dokoupil*, 667 So. 2d 275, 277 (Fla. 1st DCA 1995)).

nerve compression, which could "happen at any time and anywhere," was the cause of Silberberg's numbness, and she found that this numbness was the cause of his fall.

According to the JCC, the sitting and standing described by Silberberg were "routine movements" to which Silberberg would "normally" be exposed in his nonemployment life as well, so "[t]he risk of [Silberberg's] leg going numb existed whether at home, at work or anywhere else." In turn, the JCC followed this court's en banc decision in *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133, 1136 (Fla. 1st DCA 2019) (en banc), concluding that there was no evidence that the "physical surroundings on the job in any way contributed to the risk of an injury more than they would have in nonemployment life."

The JCC expressly rejected Silberberg's assertion that his injury is compensable simply because he fell at work. She also rejected Silberberg's reliance on *Caputo v. ABC Fine Wine & Spirits*, 93 So. 3d 1097 (Fla. 1st DCA 2012), which he used to support his contention there is 1) a presumption in favor of a compensable accident when an injury occurs at work and there is no pre-existing condition; and 2) that only a "pre-existing condition" can be a competing cause that could trigger the "increased hazard" inquiry applied by the JCC. The JCC denied Silberberg's claim for compensability. On appeal, Silberberg asks that we reverse that denial.[2]

II.

In Silberberg's view of the case, there was no evidence that he had a "pre-existing condition." In turn, he contends he sufficiently established "occupational causation" (as that term is used in the Workers' Compensation Law, to be addressed in a moment) by the mere fact that the accident occurred in the course and scope of his employment, while he was engaged in a work activity. Silberberg

[2] The JCC also denied Silberberg's claim for authorization of an evaluation and treatment of his left femur, based on her denial of compensability. Because we affirm the JCC's determination that there is no compensability, we do not address this other issue on appeal.

says that the accident in turn "was not the result of a 'personal risk' imported into the workplace," so "it does not matter whether [he] could incur the same injury whether at home, at work or anywhere else since *any* exertion connected with [his] employment is adequate to satisfy the legal test of causation." This is a case involving a workplace fall, and Silberberg takes too narrow a view of what counts as a personal risk that will trigger the "increased hazard" test, rather than the more permissive "any exertion" test that he prefers. To address his argument, we begin by covering some background on causation in this area of the law, and then by looking at how basic causation principles intersect with the statutory requirement that work be the major contributing cause[3] of a workplace injury, particularly in the context of a fall.

A.

An employee's injury is compensable under the Workers' Compensation Act if it stems from an accident that "aris[es] out of work performed in the course and the scope of employment." § 440.09(1), Fla. Stat.; *see also* § 440.02(19), Fla. Stat. (defining "injury" in terms of an accident "arising out of and in the course of employment"); § 440.02(1), Fla. Stat. (defining an "accident" in the context of chapter 440 as "only an unexpected or unusual event or result that happens suddenly"). "The phrases 'arising out of' and 'in the course of employment' are used conjunctively. The words 'arising out of' refer to the origin of the cause of the accident, while the words 'in the course of employment' refer to the time, place, and circumstances under which the accident occurs." *Bituminous Cas. Corp. v. Richardson*, 4 So. 2d 378, 379 (Fla. 1941) (citing reference omitted). For decades the supreme court has been telling us that this means an employee must "show that the accident or injury happened not only *in the course of* [his] employment but arose *out of* it. There must have been a *causal* connection between the employment and the injury." *Gen. Properties Co. v. Greening*, 18 So. 2d 908, 911 (Fla. 1944) (emphasis supplied); *Glasser v. Youth Shop*, 54 So. 2d 686, 687 (Fla. 1951) ("Since industry must carry the burden, there must then be some *causal* connection between the employment and the injury, or it must have had its

[3] Hereinafter referenced as "MCC."

origin in some risk incident to or connected with the employment, or have followed from it as a natural consequence." (emphasis supplied)).

The Legislature strengthened this work-causation requirement by adding the current definition of "arising out of" and making express reference to "occupational causation." *See* Ch. 93-415, § 2, at 73, Laws of Fla. (adding the current definition of "arising out of"); *id.* § 112, at 215 (providing for January 1, 1994, effective date for the act); *see also* § 440.02(36), Fla. Stat. With the new definition of "arising out of," the Legislature recognized that "there may be numerous contributing causes leading to an injury or disability." *Orange Cnty. MIS Dep't v. Hak*, 710 So. 2d 998, 999 (Fla. 1st DCA 1998). If there are, for an accident to be compensable, the "work performed in the course and scope of employment [must be] the major contributing cause of the injury or death." § 440.02(36), Fla. Stat. This statutory addition of the MCC standard "superseded" what had been "prior court-created causation standards." *Energy Air v. Lalonde*, 135 So. 3d 1090 (Fla. 1st DCA 2014); *see also Vigliotti v. K-mart Corp.*, 680 So. 2d 466, 468 (Fla. 1st DCA 1996) (noting that the Legislature intended the amendment to alter prior judicial construction of the term "arising out of," such that the employee "must now show that the employment constitutes a major contributing cause of the accident or injury" in every case); *Hak*, 710 So. 2d at 999 (noting that with the amendment, the employee must "establish that the employment occurrence is the most preponderant cause of the injury").[4]

Just a few years prior to the 1994 amendments, the Legislature expressly precluded any presumption in favor of the

[4] We note that the amendments did not affect prior decisions regarding when an employee is to be considered to have been operating "in the course and scope of employment." *Cf. Vigliotti*, 680 So. 2d at 468 (surmising that the Legislature did not intend to alter the judicial construction of the term "in the course and scope of employment"); *Lanham v. Dep't of Env't Prot.*, 868 So. 2d 561, 563 (Fla. 1st DCA 2004) (explaining that because the statutory amendment had no effect on "course and scope" analysis, injuries occurring during comfort breaks still could be compensable).

employee or employer as to how the facts of a case should be interpreted. *See* Ch. 90-201, § 8, at 904, Laws of Fla.; *see also* § 440.015, Fla. Stat. (1990). The 1994 amendments added the Legislature's expressed intent that the statutory provisions of the Workers' Compensation Law also are not to be construed "liberally in favor of either employee or employer." Ch. 93-415, § 1 at 69, Laws of Fla. (revising section 440.015, Florida Statutes). With the amendments, occupational causation no longer could be established based *solely* on a showing that but for the employee being at work, "he would not have been injured in the manner and at the particular time that he was hurt." *Dokoupil*, 667 So. 2d at 276. There would not be any "gimmes" regarding causation based on the mere fact that the accident or injury happened at work, especially when there exists a non-work-related factor that may have contributed to the accident or injury. If a non-work factor contributed to the accident, the employee has to demonstrate that "the employment itself created the hazard" or increased the risk of the accident. *Id.* The employee must "make a specialized, fact-based showing" in this respect. *Golly*, 867 So. 2d at 493–94. This said, there are a few enduring, basic principles that can aid in making these particularized determinations of work causation. We turn to those next.

B.

One obvious principle is that there must be a link between work and injury. The supreme court early on started looking at this link through the lens of relative risk. Work causation required that the injury have "its origin in some risk incident to or connected with the employment or that it flowed from it as a natural consequence." *Fid. & Cas. Co. of N.Y. v. Moore*, 196 So. 495, 496 (Fla. 1940); *see S. Bell Tel. & Tel. Co. v. McCook*, 355 So. 2d 1166, 1168 (Fla. 1977).

The most straightforward example here is the classic industrial accident, what we might call a "direct impact" accident. This accident typically involves an external mishap or malfunction on the job, stemming from an element in the workplace environment (*e.g.*, the employee injures his hand in a press; a machine explodes; there is a workplace fire; the ceiling at work collapses; the employee punctures his finger with a stapler). Causation is easy to see because there is little, if any, room for

intervening, non-work-related causes or risks. When the accident occurs, the employee is working while being exposed to an employer-provided risk (the equipment or surrounding environs), which directly and immediately impacts the body of the employee, causing injury. There is a direct link between the work and the injury, and any exertion for work in this situation will be enough to establish the work causation necessary for compensability. *Cf. Sentry Ins. Co. v. Hamlin*, 69 So. 3d 1065, 1070 (Fla. 1st DCA 2011) (observing that workplace injuries caused entirely by "risks peculiar to employment are universally compensable").[5] By contrast, if there is no exertion in furtherance of the employee's work—such that the risk of accident comes exclusively from personal factors—there is no compensability. *See id.* (observing that workplace injuries caused entirely by "personal risks are universally noncompensable").

Naturally following from this is the "universal principle of workmen's compensation law that an idiopathic condition which results in injury to the worker does not 'arise out of' employment unless the employment in some way contributes to the risk [of accident] or aggravates the injury." *S. Bell*, 355 So. 2d at 1168.[6]

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[5] One wrinkle here would be if the equipment or object impacting the employee was introduced by the employee from outside of work. We do not need to reach the question in this case, but in that situation, the JCC likely would have to evaluate whether the equipment or object was required or approved by the employer, or whether the equipment or object was necessary for the employee to do his job. *See Baker v. Orange Cnty. Bd. of Cnty. Comm'rs*, 399 So. 2d 400, 401 (Fla. 1st DCA 1981) (holding that injury arose out of employment when it stemmed from employee-provided equipment (electric socks), but used with the employer's awareness and required for the employee's comfort at work because of the frigid outdoor conditions at the job).

[6] We view use of the term "idiopathic" in this and other opinions to reference a *physiological* condition that is peculiar to the employee in some way. The term includes a personal condition not previously symptomatic or diagnosed, so it is broader in scope than the term "pre-existing condition," which suggests a pre-diagnosis or previous manifestation. It necessarily excludes,

Unlike with a "direct impact" accident, work causation is not necessarily as easy to discern when an accident is prompted, at least in part, by an idiopathic condition. There might not be "trauma brought about by an external force." *Legakis v. Sultan & Sons*, 383 So. 2d 938, 939 (Fla. 1st DCA 1980) (distinguishing, for example, between a direct impact accident and an "internal failure"); *S. Bell*, 355 So. 2d at 1167 (treating back pain triggered by bending over while seated as an "idiopathic" accident rather than as one caused by an "external trauma or injury"). In this situation, some aspect of the employee's personal condition unexpectedly becomes manifest or interacts with his work activity while he is performing his normal job duties. *S. Bell*, 355 So. 2d at 1169.

There is an implicit acknowledgement in earlier idiopathic cases that employees routinely bring with them to their jobs myriad yet-unknown idiosyncratic physiological conditions, and these conditions pose risks that could interact with work activities or conditions to prompt accidents or injuries. It has been understood, then, that care must be taken to account for these relative risks and ensure that employers bear the *industry* risks of accident and injury, and not those risks flowing from employees' own idiosyncratic physiological responses to everyday conditions. *See id.* (warning against converting "the workmen's compensation statute into a mandatory general health insurance policy which does not limit the burden on industry to those ailments produced even remotely by hazards of industry"); *see also Greening*, 18 So. 2d at 911 (noting that the purpose of the workers' compensation law is to have industry shoulder the expense incidental to injuries and ailments produced by industry, not "to take the place of general health and accident insurance"); *Grenon v. City of Palm*

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however, non-physiological characteristics like clumsiness or carelessness, because factoring such a personal characteristic into the work-causation analysis would be to impermissibly inject fault into the equation. *See Jones v. Martin Elecs., Inc.*, 932 So. 2d 1100, 1104 (Fla. 2006) (explaining that "the workers' compensation system provides employees limited medical and wage loss benefits, without regard to fault, for losses resulting from workplace injuries").

Harbor Fire Dist., 634 So. 2d 697, 699 (Fla. 1st DCA 1994) (noting that the workers' compensation law is not so broad as "to allow recovery for all injuries occurring in the workplace, including those arising out of conditions personal to the claimant which are not caused or aggravated by industry").

This need to account properly for personal and work risks no doubt was the driving force behind the application of the "increased hazard" test when a pre-existing or idiopathic condition is present, a test that came about long before the addition of the statutory MCC standard. The test forces consideration of whether the employee's injury "fortuitously occurred" at work, but "could have been triggered at any time" by a normal, everyday movement outside of work. *Mkt. Food Distribs., Inc. v. Levenson*, 383 So. 2d 726, 727 (Fla. 1st DCA 1980); *see also S. Bell*, 355 So. 2d at 1168 & n.3 (refusing to hold an employer responsible for the manifestation of an idiopathic condition brought about by a "wholly normal motion" that could have been performed anywhere or anytime, but "fortuitously occurr[ed] during the workday").

Work under these circumstances, at best, could be said to be an incidental cause of the accident or injury; the accident or injury, however, will not have occurred because of any added industry risk. *See Levenson*, 383 So. 2d at 727 (citing and quoting 1B A. LARSON, WORKMEN'S COMPENSATION LAW § 38.83 (1980) to explain that when an "employee brings to the job some personal element of risk unrelated to his employment," like a pre-existing condition, the work must add "to the usual wear and tear of life" for it to be compensable). Without that added industry risk, the accident or injury as a practical matter will not have arisen out of work, but instead out of the idiopathic condition, with prompting from a normal, anywhere-type of activity that happened to have been performed at work. In this situation, there would be no work causation to support compensability. *Cf. Acker v. Charles R. Burklew Constr.*, 654 So. 2d 1211, 1212–13 (Fla. 1st DCA 1995) (affirming denial of compensability for onset of neck pain caused by simply looking up at work, because the employee had previously asymptomatic, degenerative arthritis in his neck and "was not exposed by his employment to conditions that one would not normally encounter during nonemployment life"); *Grenon*, 634 So. 2d at 699–700 (explaining that a firefighter's commonplace act of

putting on his underwear at the firehouse did not increase the likelihood that an idiopathic back injury would occur at work, as compared to doing the same thing at home); *Levenson*, 383 So. 2d at 727–28 (reversing compensability for manifestation of asymptomatic stenosis brought on by pulling out a desk drawer, an exertion "no greater than one which [the employee] would necessarily have encountered in normal non-employment life"); *cf. S. Bell*, 355 So. 2d at 1167–68 (denying compensability where employee's congenital lower-back abnormality was "triggered" by normal movement of bending over while seated at work, because under the circumstances, work did not "in some way contribute[] to the risk or aggravate[] the injury").

Under the MCC standard, essentially the same type of relative risk assessment is required when a personal condition is triggered by work exertion or conditions. *See Dokoupil*, 667 So. 2d at 276–77 (treating the statutory MCC standard as requiring the "increased hazard" test when an employee "has a preexisting or idiopathic condition"; "otherwise, the statutory requirement that the injury 'arise out of employment' would be eliminated"). Indeed, the required assessment is embedded in the statute's text. The statutory MCC standard speaks to "contributing causes," and when there is more than one cause, work must be more than just *a* cause—it must be the *preponderant* cause compared to any idiopathic cause.[7]

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[7] Of course, in the absence of any idiopathic cause, there are not competing causes in the mix to assess, and the MCC standard would not be necessary. Proof of "*any* exertion" for work, even normal or mundane movement, causing the accident or injury would be enough to support compensability. *Levenson*, 383 So. 2d at 727 (emphasis supplied) (citing 1B ARTHUR LARSON, WORKMEN'S COMPENSATION LAW § 38.83 at 7-237 (1980) for the principle before addition of the MCC requirement); *see Ross v. Charlotte Cnty. Pub. Schs.*, 100 So. 3d 781, 782–83 (Fla. 1st DCA 2012) (applying the same principle after addition of the MCC requirement); *Caputo*, 93 So. 3d at 1099 (adopting and applying, "in the absence of any other ascertainable cause," the "any exertion" test from *Levenson* (via indirect quotation) in post-1994-amendment case).

We see here, then, the continued utility of the "increased hazard" test *if* there is a need to assess the relative contribution of the personal and work to the accident or injury. When there is, the same everyday movement for work that would satisfy the "any exertion" test cannot meet the MCC standard because it will not have added anything peculiar to the risk of accident or injury distinguishing it as work. The movement, when considered in the context of the triggered idiopathic condition, would be just a daily exertion that the employee could have been doing anywhere. In that case, it is the idiopathy that is the greater cause of the accident or injury. The "increased hazard" test, then, helps by ensuring that the work activity stands out as distinguishable from everyday activity and as peculiarly work, before work can be said to be the greater cause of the accident (and not just an incidental cause). This is consistent with the purpose behind the law, as we discussed.

With these general causation principles in mind, we next look at how they interplay with the statutorily required MCC standard in the context of workplace falls.

C.

A workplace fall has a particular nature as an accident when the employee's idiopathic condition is present as a potential cause. Unlike an accident involving an internal failure,[8] the accident and injury are not the same. The accident is the fall; the injury is the consequence of the employee's impact with an object or the floor. They occur sequentially—first the fall, then the impact causing injury. Sometimes, there are just work-related links in the causation chain; sometimes, there is an idiopathic condition, personal hazard, or some non-work risk in the chain. The MCC analysis must account for these links where it finds them.

For instance, take a fall at work that occurs while the employee is walking in furtherance of his duties of employment.

[8] An internal failure is a special type of accident in which, usually, there is a unity between the accident (the onset of some pre-existing or idiopathic condition prompted by some exertion for work) and the injury.

Say that in the chain of causation, the only evidentiarily established links are work-related: The employee is walking at work and for work (*e.g.*, moving between offices or stations, going into work, leaving work), he trips over his own feet, and he falls. There is no evidence of a pre-existing condition or idiopathic manifestation (*e.g.*, epilepsy, dizziness, fainting, ruptured Achilles tendon) that could be in the causation chain, so there are no non-work links to assess as competing causes. In this scenario, the mundane exertion of walking to get around at work is enough to establish a work cause because the "any exertion" test does not look at the quality or quantity of the activity. "Any exertion" means any effort in furtherance of work will do. *Cf. Caputo*, 93 So. 3d at 1099 (holding that in the absence of proof of a pre-existing condition or any other competing cause, evidence that the employee was working at the time of his fall was enough to satisfy the statutory MCC requirement); *Walker v. Broadview Assisted Living*, 95 So. 3d 942, 943 (Fla. 1st DCA 2012) (holding that where it was undisputed that the employee was actively engaged in a work-related activity like walking, and there were no competing causes of the accident or injury, the "work activity was de facto the major cause"); *see also Levenson*, 383 So. 2d at 727 (explaining that the "any exertion" test applies when there is no idiopathic condition that contributed to the accident).[9] Work here necessarily

[9] To this point about establishing any exertion for work, we highlight an obvious fact that oftentimes is missed. Walking and sitting—although mundane, everyday actions that occur outside of work—are essential to an employee's work in furtherance of his employment duties. An employee needs to walk to get into and out of the workplace and to get from point A to point B to point C at the workplace to accomplish his work. The employee may also sit at work from time to time for comfort or rest to facilitate his accomplishing of his work effectively. *Cf. Baker*, 399 So. 2d at 401 (observing that "the employer's interest may reasonably be regarded as furthered by increased productivity from personal comfort activity"). In turn, walking or sitting at work, in furtherance of work, can satisfy the "any exertion" test if a fall occurs while doing either, and if there is no evidence of an idiopathic or pre-existing condition contributing to the fall.

is the preponderant cause because it is the only cause. There is no relative risk (work versus non-work) to be assessed.

Now add an idiopathic condition to the causation chain. Assume there is evidence that the employee fell because his knee gave out while walking between offices at work. As we noted in the preceding subpart, the "any exertion" test no longer applies because there is more than one cause—both work-related and personal risk of accident are present. In the chain, the walking for work no longer is *the* cause of the accident; it is *a* cause, and potentially a mere incidental one. The walking did not necessarily contribute more than just an everyday risk that the knee would give out. The "increased hazard" test here is necessary to determine, from among the contributing causes of the fall, whether the preponderant cause—the one triggering the subsequent links in the chain, including the onset of the idiopathy that led to the fall—was just walking that incidentally was work; or was truly movement that stands apart from daily life as work *qua* work in furtherance of the employee's duties.

Caputo and *Valcourt-Williams*—two decisions involving workplace falls that the JCC mentioned in her compensation order—illustrate the difference that the 1994 amendments make in the causation analysis. In *Caputo*, there was evidence that the employee was engaged in a work activity (sawing shelves), and no evidence pointing to any non-work explanation for the fall (including some contributing personal factor). *See Caputo*, 93 So. 3d at 1098–99. The employee had no recollection of how the accident happened, so whether the fall resulted from an onset of a personal condition or some external force or factor from the work environment was unknown. In turn, evidence that the employee fell while doing something for work, at work, *regardless of the level of exertion*, was enough of a causal connection between the work and the accident to support compensability; there was no "other ascertainable cause." *Id.* at 1099. The absence of evidence of a personal condition or risk contributing to the fall absolved the employee of having to satisfy any standard but the "any exertion" test. Proof of any work performed when the accident happened was proof of but a single explanation for the accident: the work. With work as the only proven cause, the accident and the ensuing injury arose from the work. *See id.*

Then there is *Valcourt-Williams*, about which there has been some misunderstanding with regard to its scope and significance. As we see it, *Valcourt-Williams* involved an otherwise unremarkable trip-and-fall-at-work accident that happened to occur during a comfort break and involve the employee's own dog as a tripping hazard. The decision's importance, if any, lies in its rejuvenation of the decades-old requirement, made clear by the 1994 statutory amendments, that the employee separately prove work causation, even when the accident happens during a comfort break at work. *Valcourt-Williams* provided a needed reminder of the long-standing statutory principle that "compensability *always* turns on whether the *employment* led to the risk [of injury]." 271 So. 3d at 1136 (emphasis supplied*)*. That *Valcourt-Williams* was a narrow, trip-and-fall/comfort-break-accident case explains why the only decisions this court expressly overruled were those that seemed to hold—contrary to this principle—that an injury at work *necessarily* arose out of work *because* the accident happened on a comfort break. *See id.* at 1137. That is it; nothing more, nothing less.[10] As we just described in the margin, the decision is quite

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[10] We hasten to note here that reports of *Caputo*'s implicit demise at the hands of *Valcourt-Williams* are greatly exaggerated. The majority in *Valcourt-Williams* did not even mention *Caputo*. Then again, why would it have? In *Caputo* there was *only* evidence of the employee having been engaged in exertion for work and during work at the time of the accident; there was no evidence of any other risk contributing to the fall. Because there was no evidence of a personal condition as a contributing cause, the "increased hazard" analysis was not necessary in *Caputo*, for reasons we already have explained. *Valcourt-Williams* addressed a different problem—whether exertion at work but during a comfort break is work at all when considering causation. A comfort break is inherently personal, and there usually is much about the break that will not be clearly work related. The decision, then, effectively rejected the principle (stemming from the four cases it expressly abrogated) that *any* activity *during a comfort break* necessarily constitutes exertion for work and satisfies the "arising out of" requirement. After *Valcourt-Williams*, an employee injured during a comfort break must demonstrate that the nature of the cause of the comfort-break accident was truly either exertion specifically for work (and not just a personal comfort-break

narrow, and it does not require, as some have suggested, that the "increased hazard" test apply whenever an employee falls at work while engaged in some normal or everyday activity like walking or sitting.

We cannot overstate the point here that, outside the context of a comfort-break accident, it is the presence of an idiopathic condition that triggers the "increased hazard" test, not the commonplaceness of the work activity or condition that caused the fall. *Valcourt-Williams* has nothing to say on this point. Again, the only reason this court applied the "increased hazard" test (and not the "any exertion" test) in *Valcourt-Williams* was because the accident occurred on a comfort break, and there had to be some way to distinguish between work or a work condition as the possible cause, on the one hand; and a personal activity or condition as the possible cause, on the other.

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activity) or a true work condition (and not a "feature[] of [the employee's] 'non-employment' life"). 271 So. 3d at 1136. *Valcourt-Williams* simply employed the "increased hazard" test in a new way as an analytical tool to get efficiently at the question of whether the conditions of the employee's comfort break causing the accident were of work provenance. This very narrow application of the "increased hazard" test in a very particular accident scenario has no effect on the "any exertion" analysis applied in *Caputo*, which remains fully intact following the en banc decision.

While we are at it down here in the margin, we should note that decisions like *Walker* and *Ross* are also alive and well. Both these cases involved falls while walking at work, without an intervening idiopathic condition or personally presented external hazard having played a role. *See Walker*, 95 So. 3d at 943 (determining that a workplace fall was compensable where the employee's foot slipped while walking for work); *Ross*, 100 So. 3d at 782–83 (rejecting application of the "increased hazard" test to workplace trip-and-fall where the employee's foot caught on the linoleum flooring while walking quickly between classrooms). In both, the "any exertion" test applied, as it did in *Caputo*; so like *Caputo*, both decisions are left untouched by *Valcourt-Williams*.

All of this brings us to the primary issue on appeal. Did the JCC apply the correct analysis in this case? Silberberg says no, and we go there in our final part.

III.

A.

Silberberg contends that the JCC should have applied the "any exertion" test to his fall. He premises this argument on the assumption that the risk of his leg falling asleep does not count as a personal condition that would require the "increased hazard" analysis. He narrowly construes the personal-risk requirement to include only a diagnosed or symptomatic pre-existing medical condition, and he does not see his foot falling asleep as that type of condition. This is not correct. Indeed, the JCC was right in her rejection of this position as unsupported by the law and prior decisions.

As the JCC observed, there is nothing in the handling of causation historically that suggests there is a meaningful difference between a "pre-existing condition" and an idiopathic condition for the purpose of triggering the "increased hazard" test in a fall case. We glean from prior decisions that an idiopathic condition triggering the "increased hazard" test can take a variety of forms and need not be "pre-existing" (*i.e.*, previously manifested or diagnosed) at all. It could be something like an idiopathic response seen in an internal failure. *See Grenon*, 634 So. 2d at 699 (treating a firefighter's back strain while putting on his underwear at the firehouse as an "internal failure" and analyzing work causation as an "idiopathic" case); *S. Bell*, 355 So. 2d at 1167; *cf. Victor Wine & Liquor, Inc. v. Beasley*, 141 So. 2d 581, 588 (Fla. 1962) (on rehearing) (listing "internal failures" like "a strained muscle, ruptured disc, [or a] 'snapped' knee-cap, and the like, brought about by exertion in the performance" of work in furtherance of employment duties").[11] It could be something like

[11] This is not an internal failure case. We mention these examples only for the purpose of showing that personal conditions can be idiopathic, but not "pre-existing," and still be considered a personal cause of a workplace accident. At the same time, we

dizziness, labyrinthitis, or epilepsy. *See Medeiros v. Residential Cmtys. of Am.*, 481 So. 2d 92, 93 (Fla. 1st DCA 1986); *see also Legakis*, 383 So. 2d at 939–40 (describing the fall caused by epilepsy in *Fed. Elec. Corp. v. Best*, 274 So. 2d 886 (Fla. 1973), as "idiopathic"). Or, it might be an external failure of equipment designed to help an idiopathic condition, like a leg brace. *See Leon Cnty. Sch. Bd. v. Grimes*, 548 So. 2d 205, 207 (Fla. 1989). We see no good reason to start making Silberberg's distinction between types of physiological conditions in a fall case, especially given that the text of the statutory "arising out of" definition makes no such distinction.

In turn, as we have stated repeatedly, any idiopathic condition—including the onset of a physiological response that is idiosyncratic to the employee—can be a personal risk that triggers the "increased hazard" test, provided there is evidence that it played a role in the fall or ensuing injury. With this stated, we can determine whether an idiopathic condition contributed to Silberberg's fall. We conclude that there was. We in fact see some similarity between the sudden onset of Silberberg's leg numbness while simply sitting, and the out-of-the-blue back pull experienced by the firefighter in *Grenon*. In that case, this court treated the back pull as an idiopathic response prompted by the mundane activity of pulling on his underwear at the fire station, thereby triggering the "increased hazard" test.

Silberberg's fall occurred because he experienced an unexpected onset of numbness in his leg, prompted by his sitting for work. He brought to work his inherently personal physiological tendency that his leg would go numb—that his vasculature and nervous system would respond in a certain way—while he sat or stood. Indeed, as we mentioned earlier on, idiopathy cases in the past recognized that each employee brings his own unique, internal-body-composite to work, so each employee brings a

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recognize that for certain types of accident (but not falls like the one here), there must be a diagnosed or previously documented physiological condition that qualifies it as a "pre-existing condition" that will dictate the applicable causation standard to be applied. *See, e.g.*, *Zundell v. Dade Cnty. Sch. Bd.*, 636 So. 2d 8 (Fla. 1994); *Victor Wine*, 141 So. 2d at 588–89.

slightly different risk of physiological response to work activity. The medical evidence in this case established that Silberberg's leg falling asleep could have happened anywhere, at any time; but his particular physiological phenomenon fortuitously happened at work and caused his fall. There in turn was sufficient evidence on which the JCC could rely to conclude that Silberberg's idiopathic response contributed to his fall. This idiopathy necessitated application of the "increased hazard" test to determine whether Silberberg's sitting for work was the MCC of his fall or injury. The JCC applied that very test.[12] All that is left for us to do is determine whether the JCC applied that test correctly. That is where we head now.

B.

There was no dispute or ambiguity about the nature of Silberberg's accident. The school provided him a desk and chair in his classroom, and Silberberg used that chair during class. Before the accident, Silberberg was where he was supposed to be at work, doing what he was supposed to be doing. There can be no doubt, then, that sitting was a work activity within the scope of Silberberg's employment as a teacher. It also is clear, then, that Silberberg's work triggered his idiopathy—his leg falling asleep. In turn, Silberberg's work also contributed to his fall, at least in a "but-for" sense. However, was the work the MCC of the fall?

The JCC properly assessed whether Silberberg's work could be the preponderant cause by considering the nature of his sitting and whether it required more than the normal exertion associated with sitting in non-work life. To establish that his sitting was the

[12] Let us be clear about why we say the JCC applied the correct test. There is no doubt that the sitting was his exertion for work. However, if he had tripped on the chair while standing up and then fallen—unless there was evidence of some idiopathic condition or some external personal hazard (*e.g.*, dog, peculiar shoes) that contributed to the trip and fall—the sole explanation for the fall would have been exertion for work. The "increased hazard" test would *not* have applied. The *only* reason the "increased hazard" test applies in Silberberg's case is the evidence pointing to his idiopathic response to the sitting.

MCC of his fall, Silberberg had to present evidence that the sitting at the time of the accident was an exertion or strain more or different than what he ordinarily would encounter in his non-work life. *Cf. Acker*, 654 So. 2d at 1213 (affirming denial of claim because employee's "onset of neck pain was occasioned by the mundane activity of merely looking overhead, as opposed to some sort of more extreme or violent action peculiar to the construction industry"); *Cheney v. F.E.C. News Distrib. Co.*, 382 So. 2d 1291, 1292 (Fla. 1st DCA 1980) (holding that work caused the employee's dizziness and injury from the resulting fall because the nature of the work precluded him from controlling the amount of "twisting, turning, and bending" that might prompt onsets of dizziness like he could at home). This, Silberberg did not do.

He did not present evidence that he had to sit for an unusually long period of time, or that the chair in his classroom was unusually hard or particularly prone to causing one's leg to fall asleep. There was no evidence of some work-induced need for Silberberg to suddenly jump up from his chair without taking time to pay attention to his balance. *Cf. Legakis*, 383 So. 2d at 940 (determining that work substantially contributed to the employee's sudden collapse because spray to her face prompted an abrupt change of position that caused her to fall).

The evidence before the JCC established that Silberberg's sitting before the fall was normal, was for a normal amount of time, was in a normal chair, and ended in a typical way without Silberberg abruptly leaping to his feet. There was nothing unusual about the floor that facilitated the fall. For the JCC, then, while there was evidence that Silberberg's sitting at work was in the chain of causation leading to his fall, Silberberg did not establish that his sitting for work, under the circumstances, was anything more than an incidental trigger of Silberberg's idiopathic response. The same sitting outside of work was just as likely to be that trigger, which means that the sitting was not the *preponderant* cause, or MCC, of Silberberg's fall.

The JCC's conclusion that Silberberg's fall did not "arise out of" his work was well supported by the evidence in the record, as was her ultimate denial of compensability.

AFFIRMED.

B.L. THOMAS and WINOKUR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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