THE JUDGES OF COMPENSATION CLAIMS' APPLICATION OF *SEDGWICK CMS VS. VALCOURT-WILLIAMS*, 2019-2021

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The First DCA issued its *en banc* opinion in *Sedgwick CMS v. Valcourt-Williams* in 2019. Often referred to as the "dog" case, it applies far more broadly. In essence, the case established a clear test for determining whether an injury arises from the claimant's employment. Specifically, it requires the claimant to prove that the injury was caused by an employment-created risk, which is not present in the claimant's non-employment life.

Since then, the JCCs have ruled on 23 claims where compensability was denied citing *Valcourt-Williams*. Of the 23 cases, the claimant prevailed in 15 of them while the E/C prevailed in only 8 cases. Of the 23 cases decided thus far, 8 are currently on appeal. Of the appeals, only 2 of them involved cases where the claimant won. Six appeals address claims denied by the JCC. The focus of this brief article is on the cases where the E/C prevailed before the JCC since those types of fact patterns appear to be the ones that are most likely to sway the JCC in our favor. Therefore, each will be addressed in turn.

In *Castano v. Novel Learning Communities*, OJCC No. 20-006592DAL, the claimant was playing with a co-worker's gun in the parking lot while on break. The claimant was shot in the eye. The claimant argued the claim was compensable since the claimant was not the one who fired the weapon. Instead, the gun was accidently fired by the co-worker. The claimant argued that he was on the employer's premises and engaged in an authorized break and therefore the claim was covered. The JCC rejected the claimant's arguments, finding that the employment did not create the risk of the injury and therefore the injury did not arise out of the employment.

In *Young v. Cemex*, OJCC No. 19-005255JAW, the claimant was a cement truck driver that made a delivery to a jobsite. He parked his truck and walked over to have a ticket signed by someone on the jobsite. While walking back to his truck on defect free, level ground, he felt a "pop" in his knee. The JCC denied the claim, ruling that walking on level ground did not subject the claimant to a risk of injury that he did not face in his non-employment life. Therefore, the Judge ruled that the injury did not arise from the employment.

In *Long v. City of Melbourne*, OJCC No. 19-016164RLD, the claimant was walking down a set of stairs at work when the arch of his foot collapsed. The JCC denied the claim both because the claimant suffered from a pre-existing condition and because walking down the stairs was something the claimant did in his non-employment life. Therefore, the active walking up and downstairs did not subject the claimant to a risk of injury specific to the employment.

In *Silberberg v. Palm Beach County School Board*, OJCC No. 19-006573CJS, the claimant was a teacher sitting on a hard chair proctoring an exam. After sitting for a few minutes, he stood up, but fell to the ground because his leg "fell asleep". The Judge denied compensability of the claim finding that the active sitting in a chair was something all people do in their non-employment life. Having a leg "fall asleep" is a universal experience. The Judge found that the work did not present a risk of injury that the claimant did not face in his non-employment life and denied the claim.

In *Rodgers v. Winn-Dixie Stores*, OJCC No. 20-010060KFO, the claimant was on break and in the company break room. The last thing he remembered was reaching for the refrigerator door and then looking up and seeing paramedics. No doctor pinpointed the cause of the claimant's fall although it was suspected that the claimant suffered a syncopal episode. The Judge denied the claim, reasoning that the claimant was stationary, there was no defect in the floor and reaching for a refrigerator door is a universal experience that did not subject the claimant to a work-related risk of injury.

In *Santiago v. SBA Communication Corp*., OJCC No. 20-001834TAH, the claimant was merely walking and twisted her ankle for no reason at all. The Judge wrote a very lengthy and excellent Order finding the claim not compensable. He found that walking on a level, defect free surface is a universal experience and doing so at

work did not subject the claimant to a work-related risk of injury and therefore the injury did not arise from the employment.

In *Soya v. Health First, Inc.*, OJCC No. 20-008027RLD, another claimant that was again walking on level, defect free carpet when she fell. She admitted she did not know why she fell. The E/C presented the testimony of an engineer who opined that the flooring was appropriate and defect free. The Judge denied the claim ruling that the claimant fell to prove that her injury arose from her employment since it was not related to a work-created risk of injury.

In *Ballard v. Hardee Correctional Institute*, OJCC No. 20-021918RAA, the claimant was injured in the company parking lot in his own vehicle. He caught his foot under the brake pedal of his personal car, twisting it and suffering an injury. The Judge denied the claim because he found there was nothing about the claimant's employment as a correctional officer that exposed him to conditions that substantially contributed to the risk of his catching his foot under the brake pedal of his car and that it could have occurred anywhere at any time. Thus, the injury did not arise from the employment.

Taking all of these cases into consideration, it appears as though a *Valcourt-Williams* denial is most likely to prevail where there is clearly a personal, non-work related cause for an injury that occurs at work. There is also substantial support for a *Valcourt-Williams* denial on a case where the claimant is nearly injured while merely walking on a defect free surface. Whether the claimant twists an ankle, feels a knee pop, or falls to the ground, a number of JCCs have been convinced that such claims no longer arise from the employment under *Valcourt-Williams*, which is a result that defers from a number of prior appellate decisions. The firm will continue to monitor all these cases before the JCCs and the appellate courts and will welcome the opportunity to discuss specific facts patterns with you.

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