The Idiopathic Defense: The Most Overlooked Tool in NJ Workplace Injury Litigation

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New Jersey workers' compensation is based on a no-fault system. Within its framework, employers and their insurance companies utilize various commonly known defenses against employees' claims for benefits, such as lack of notice, causation, intentional or self-infliction of injuries, or accidents that are unrelated or not within the course of the employment. However, employers and insurance companies often overlook a simple strategy that may be right under their noses—the idiopathic defense. An injury is idiopathic if it could have occurred anywhere, but just so happened to have occurred at work. These injuries are often caused by a person's inherent medical condition, rather than circumstances directly arising from the workplace.

Generally, in New Jersey, for an accident to be deemed compensable there must be "a causal connection between the employment and the injury." *Coleman v. Cycle Transformer Corp. , 105 N.J. 285, 290 (1986); see also N.J.S.A. 34:15-7 (stating that an accident is compensable if it is "arising out of and in the course of employment"). Generally, "[i]f the employment is a contributing cause to the accident, the statutory requirement is met …. The employment need not be the sole or proximate cause of the injury; it is sufficient if it is a necessary factor leading to the accident." Sanders v. Jarka Corp., 1 N.J. 36 (1948).*

The answer to the causation question lies in the type of risk encountered by the employee. New Jersey courts have recognized and explicated three types of risk arising in the workplace, which, when considered in the context of causation, form a spectrum of potential employer liability. First is the "but for" test to determine "whether it is more probably true than not that the injury would have occurred during the time and place of employment rather than elsewhere." *Howard v. Harwood's Rest. Co., 25 N.J. 72, 83 (1957).*

For instance, an employee was involved in a motor vehicle accident with a coal truck, and in the process of obtaining the truck operator's registration and driver's license number per his employer's instructions in the event of an accident, an argument followed, and the employee was assaulted by an occupant of the coal truck. *See Sanders v. Jarka Corp. , 1 N.J. 36, 38-39 (1948). As a result, the employee sought workers' compensation benefits from the employer. The New Jersey Supreme Court held that "[t]he employment was not indeed the proximate cause of the accident, but it was a cause in the sense that, but for the employment, the accident would not have happened."*

The second type of risk is described as "neutral" and "may be defined as uncontrollable circumstances which do not originate in the employment environment but which happen to befall the employee during the course of his employment[,]" such as an act of God. *Howard,* 25 N.J. at 84. Examples may include being struck by lightning or being injured in a terrorist attack while at work.

The idiopathic defense is used to address the third category of risk, that is, the risk of injury

caused by an employee's particular susceptibilities to injury and not by any particular catalyst in the workplace. If there is no causal connection whatsoever and it is a purely personal condition, then it is considered to be an "idiopathic fall." *George v. Great E. Food Prods., 44 N.J. 44, 45 (1965). Arthur Larson, author of Workmen's Compensation (1990) defines this as follows:*

> If the time has come for the employee to die a natural death, or to expire from the effects of some disease or internal weakness of which he would as promptly have expired whether he had been working or not, the fact that his demise takes place in an employment setting rather than at home does not, of course, make the death compensable. Or if the employee has a mortal personal enemy who has sworn to seek him out wherever he may be, and if this enemy happens to find and murder the employee while the latter is at work, the employment cannot be said to have had any causal relation to his death.

In order to utilize the idiopathic defense, the record must substantiate a finding that the event was caused solely by disease or infirmity peculiar to the individual and not a condition of the employment. *Verge v. County of Morris , 272 N.J. Super. 118, 124 (App. Div. 1994) (citing Spindler v. Universal Chain Corp. , 11 N.J. 34, 39 (1952)). Although the employer has the burden of proving the accident was the result of the physical condition of the employee, seeAtchison v. Colgate & Co., 3 N.J. Misc. 451 (1925), aff'd 102 N.J.L. 425 (E. & A.1925), only circumstantial evidence is necessary. SeeVerge, 272 N.J. Super. at 125; Jochim v. Montrose Chemical Co., 3 N.J. 5 (1949) (stating that "[p]robability, and not the ultimate degree of certainty, is the test").*

Additionally, because New Jersey follows the proposition that the employer takes an employee as he/she is, an employee is not disqualified under the requirement that the injury arise out of the employment where the pre-existing condition is aggravated, accelerated, or combined with the pre-existing disease or infirmity to produce the disability for which compensation is sought. *Id.* at 126; *see alsoKelly v. Alarmtec*, 160 N.J. Super. 208, 212 (App. Div.), certif. denied, 78 N.J. 340 (1978). Simply put, if an employee can prove that his/her prior condition was aggravated by a work-related accident, then the employer would have to pay for any treatment or permanent disability benefits.

Many idiopathic cases arose out of employees suffering from heart attacks or epileptic seizures, which resulted in subsequent falls and other injuries. *See, e.g. , Reynolds v. Passaic Valley Sewerage Comm'rs, 130 N.J.L. 437 (Law Div. 1943), aff'd o.b., 131 N.J.L. 327 (E. & A.1944) (finding that "the cause of the petitioner's face coming in contact with the stove was not … his tripping over the chair in the shanty or other like occurrence but was … an epileptic seizure which he suffered and which was unconnected with his employment"). However, there are other factual scenarios in which the idiopathic defense is applicable. For example, in Verge, the petitioner slipped on a rug in the courthouse lobby while at work. 272 N.J. Super. at 128. The judge of compensation found that this was an idiopathic event since it was an incident that "could have occurred anywhere at any time" and dismissed the claim. However, the appellate court reversed due to the inadequacy of the record and failure to give both parties the opportunity to produce all evidence bearing on the issue of whether the petitioner twisted her knee because she slipped on the rug while at work, or whether her knee twisted or gave-out due to an idiopathic or personal cause.*

Another example arose when a police officer, in responding to an emergency call, allegedly struck the steering wheel and injured his back while getting out of his vehicle. *SeeMcNeil v. Twp. of S. Brunswick Police*, 2012 N.J. Super. Unpub. LEXIS 1029, *1 (App. Div. May 9, 2012).

However, the officer was revealed to have a history of low back problems, and the judge of compensation found no causal relationship between exiting a vehicle and the officer's diagnoses. The Appellate Division affirmed the findings in that merely exiting a vehicle could not be causally related to or the root of the officer's low back issues because, "[u]nless it is more probable that the injury would not have occurred under the normal circumstances of everyday life outside of the employment, the necessary causal connection has not been established."

Overall, so long as an employee can demonstrate that some event at work caused the injuries, the burden then shifts to the employer to prove that the injuries were caused solely by a personal condition and could have occurred at any time and place, but just happened to occur at work. Though not made easy by the lack of formal discovery in New Jersey workers' compensation practice, it can be accomplished through careful scrutiny of medical records and serving subpoenas to primary care physicians for any prior relevant medical conditions or surgeries.

Many employers and insurers jump to the conclusion that when an employee suffers an injury at the workplace, it necessarily means that it is a compensable accident. However, in factual scenarios where an injury occurred that was not due to any fault of the employer or arising out of employment, but due to the employee's personal medical condition, the idiopathic defense can prove to be an effective tool for reducing payouts for employers and insurance companies alike.

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