LAWRENCE M. DUCHENE, Employee/Appellant, v. AQUA CITY IRRIGATION and WESTERN NAT'L INS. CO., Employer-Insurer, and MEDICA CHOICE/HEALTH CARE RECOVERIES, INC., FAIRVIEW SOUTHDALE HOSP. and INST. FOR ATHLETIC MEDICINE, and ASPEN MEDICAL GROUP, Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
FEBRUARY 19, 1998

No. *[redacted to remove social security number]*

HEADNOTES

ARISING OUT OF & IN THE COURSE OF. The employee's May 30, 1995 left knee injury arose out of and in the course of his employment where the injury occurred as the result of an unknown risk or hazard, causing the knee to pop as the employee stood up at the completion of his lunch break, while at the employer's work site.

Reversed.

Determined by Olsen, J., Johnson, J., and Hefte, J.
Compensation Judge: Rolf G. Hagen

MAJORITY OPINION

R.V. (SALLY) OLSEN, Judge

The employee appeals from the compensation judge's finding that the employee's May 30, 1995 knee injury was idiopathic in origin, and the judge's determination that the employee failed to prove that his knee injury arose out of his employment with the employer. We reverse.

BACKGROUND

The employee, Larry M. Duchene, works as a laborer for the employer, Aqua City Irrigation. The company installs underground sprinkler and irrigation systems. Typically, the employee reports to the employer's shop, and helps load equipment and materials for the installation. The employee and his co-workers are then driven to the work site in a company truck, and are taken back to the shop at the end of the work day. The employee is paid from the time he reports to the employer's shop at the beginning of the day until his return to the shop at the end of the day, including rest and meal breaks. (Stipulation 1; findings 2, 3; T. 9-12; 14, 16-17.)

On May 30, 1995, the employee was part of a crew installing a sprinkler system at Freeway Dodge. The employee was operating a jack hammer that morning, removing pavement from a driveway. At about noon, the employee took a break to eat lunch. He remained at the

work site, sitting on the grass with his legs crossed. The employee finished his meal and was preparing to go back to work. As he stood up, he heard a loud pop and felt immediate pain in his left knee. He fell to the ground, clutching his knee, and remained there for several minutes. The employee could recall no particular incident while standing up, such as twisting or turning his knee, slipping, or stepping on a rock. Despite being in pain, the employee completed a full ten hour work day. (Judgment Roll: 6/14/95 First Report of Injury; 6/13/97 Motion to Intervene-Aspen Medical Group - attached 5/31/95 chart note of Dr. Chesler; Finding 4; T. 14-16, 20-23; see 10-12; Exh. C: 6/27/97 initial PT summary; Exh. E: 6/1/95 chart note of Dr. Naas.)

The employee's knee was quite stiff when he awoke the next morning, but he reported to work. He completed a full ten and a half hour day, but as the day progressed, his knee became swollen and extremely painful. That evening, the employee was seen by Dr. Paula A. Chesler at Aspen Medical Group. The employee was fitted with a knee immobilizer and crutches, and was taken off work until seen by an orthopedic specialist. On June 1, 1995, the employee was examined by Dr. Peggy L. Naas, an orthopedic surgeon with the Aspen Medical Group, who diagnosed a medial meniscal tear in the left knee. The employee underwent surgery, in the nature of an arthroscopy and partial medial meniscectomy on June 9, 1995. (Judgment Roll: 6/13/97 Motion to Intervene-Aspen Medical Group - attached 5/31/95 treatment record of Dr. Chesler; Findings 5, 6; T. 15-16; Exh. D; Exh. E.)

On July 12, 1995, the employer and insurer filed a notice denying primary liability for the employee's left knee condition, asserting that the injury was not related to his work activities.[1] The employee filed a claim petition on January 30, 1996, seeking temporary total disability benefits from June 1 to July 7, 1995, permanent partial disability benefits, and payment of various medical expenses. Following a hearing on July 1, 1997, a compensation judge at the Office of Administrative hearings found, among other things, that the left knee injury of May 30, 1995 was idiopathic in origin. He concluded that the employee had sustained an injury to his left knee in the course of his employment, but had failed to prove that his left knee injury arose out of his employment with the employer.[2] (Findings 7, 10, 11, 12.) The employee appeals.

STANDARD OF REVIEW

---

[1] The employer and insurer filed an initial notice denying liability on June 14, 1995, stating that the cause of the employee's disability was not clear, and that a determination of liability would be made following an investigation. In the second notice filed July 12, 1995, the employer and insurer denied primary liability asserting that the employee was not performing any work-related tasks at the time of the injury. (Judgment Roll.)

[2] The dissent asserts that the compensation judge's determination that the employee failed to prove that his left knee injury arose out of his employment constitutes a factual finding. We disagree. This is a legal conclusion, requiring application of the law to the facts.

On appeal, this court must determine whether the compensation judge's findings and order are clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted. Minn. Stat. § 176.421, subd. 1(3) (1992). Where the evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings must be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 37 W.C.D. 235 (Minn. 1984). Similarly, factfindings may not be disturbed, even though this court might disagree with them, unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). Where the decision rests upon the application of the law to essentially undisputed facts, this court may consider the issue *de novo*. Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607 (W.C.C.A. 1993).

DECISION

The primary issue in this case is whether the left knee injury sustained by the employee on May 30, 1995, was an injury arising out of and in the course of his employment.[3] Minn. Stat. § 176.011, subd. 16 and § 176.021, subd. 1. Although the arising out of and in the course of requirements express two different concepts, these requirements are not independent, but are elements of a single test of work-connection. United Fire & Casualty Co. v. Maw, 510 N.W.2d 241, 244 (Minn. Ct. App. 1994).

Arising in the Course of

The compensation judge found that the employee's injury arose in the course of his employment. (Finding 7.) We agree, but on different grounds. The phrase in the course of refers to the time, place and circumstances of the injury. Gibberd v. Control Data Corp., 424 N.W.2d 776, 780, 40 W.C.D. 1040, 1047 (Minn. 1988). There is no dispute that the employee's left knee injury occurred when he stood up from the ground, preparing to return to his work activities, after eating lunch at the work site. The compensation judge applied the traveling employee doctrine to extend coverage to the employee. (See mem. at 7, 8.)[4] We believe the more appropriate and useful analysis in this case is the meal break rule.

---

[3] Although the term personal injury is used in the Minnesota statute to denote a compensable workers' compensation injury (Minn. Stat. § 176.011, subd. 16), we find it confusing to use the word personal to describe both a work-related injury and a non-occupational condition or event personal to the employee. We, therefore, refer to compensable injuries as work-related, and use the word personal solely to describe non-occupational injuries or conditions personal to the employee.

[4] The traveling employee doctrine extends coverage to an employee while engaged in travel away from the employer's premises as part of the employer's business. This, and other doctrines, are exceptions to the basic rule that employees are covered while engaged in, on or about the [employer's] premises, that is, the location where the employee's services require the employee's presence as a part of such service at the time of the injury. Minn. Stat. § 176.011,

It is well established that injuries that occur on the employer's premises during the work day while the employee is attending to personal needs or comforts arise in the course of the employment. See, e.g., Snyder v. General Paper Corp., 277 Minn.376, 152 N.W.2d 743, 24 W.C.D. 255 (1967); Kaletha v. Hall Mercantile Co., 157 Minn. 290, 196 N.W. 261, 2 W.C.D. 100 (1923); see generally, 2 Arthur Larson & Lex K. Larson, Workers' Compensation Law, §§ 21.00, 21.21. The course of employment is not confined to the actual manipulation of the tools of work. United Fire & Casualty Co., 510 N.W.2d at 245. Thus, the rule [is] . . . that an employee's injury . . . incurred during a >meal break' is compensable under the workers' compensation law if . . . it occurred at a place that can reasonably be construed to be a part of the employment premises. Gibberd, 424 N.W.2d at 782, 40 W.C.D. at 1051-52; Lassila v. Sears, Roebuck & Co., 302 Minn. 350, 224 N.W.2d 519, 27 W.C.D. 666 (1974). An employee is covered while engaged in, on, or about the premises where the employee's services require the employee's presence as a part of such service at the time of the injury. Minn. Stat. § 176.011, subd. 16. The employee's injury clearly arose in the course of his employment on the facts presented here.

Arising out Of

The more difficult issue in this case is whether the employee's injury arose out of his employment. The term arising out of refers to a causal connection between the employment and the injury. The term does not refer to causation in the sense of a direct or proximate cause, but expresses instead an element of origin, source or contribution. Thus, an injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment; in other words, out of the employment looked at in any of its aspects. United Fire & Casualty Co., 510 N.W.2d at 244; Breimhorst v. Beckman, 227 Minn. 409, 35 N.W.2d 719, 728, 15 W.C.D. 395, 405-06 (1949).

Minnesota courts have essentially applied two tests to determine whether an injury arises out of the employment. See, e.g., United v. Fire & Casualty Co., 510 N.W.2d at 244; for a general discussion see 1 Larson, ch. 3, § 6.00. The increased risk test requires a showing of exposure to some risk or hazard having its origin or source in the employment that the employee would not have been exposed to if pursuing his or her personal affairs. Or, put differently, that the employee was exposed to a risk of harm greater than that of the general public because of the nature, obligations or incidents of the employment. See, e.g., Nelson v. City of St. Paul, 249 Minn. 53, 81 N.W.2d 272, 273-74, 19 W.C.D. 120, 123 (1957); Olson v. Trinity Lodge No.

---

subd. 16. Rules such as the traveling employee doctrine, the coming and going rule, special hazard (street risk) doctrine, special errand doctrine, ingress and egress rule, employer furnished transportation rule, and so forth, expand the scope of coverage to certain injuries that occur off the employer's premises or away from the work site. See Larson, §§ 14-15, discussion of course of employment rules. Since the employee's injury clearly occurred at the work site in this case, there is no need to apply any of the off-premises injury exceptions.

282, A.F. & A.M., 226 Minn. 141, 32 N.W.2d 255, 15 W.C.D. 251 (1948); Brusven v. Ballord, 217 Minn. 502, 14 N.W.2d 861, 13 W.C.D. 211 (1944); 1 Larson, § 6.30. Under the positional risk test, the employee need show only that the obligations or incidents of the employment placed the employee in the particular place at the particular time that the employee was injured by some neutral risk or hazard. See, e.g., United Fire & Casualty Co., id.; Lange v. Minneapolis-St. Paul Metro. Airports Comm'n, 257 Minn. 54, 99 N.W.2d 915, 21 W.C.D. 61 (1959); 1 Larson, § 6.50.

As noted by the supreme court in Gibberd, courts have repeatedly experienced difficulty in attempting to apply these concepts to the facts of any particular case. This case presents an unusual situation, for which there does not appear to be any direct case precedent in Minnesota. The employee could recall only that his knee popped as he stood up from the ground after lunch. The employer and insurer asserted that the employee's knee injury was, therefore, idiopathic in origin and was not compensable. The compensation judge agreed, noting that there was no evidence that the employee was placed in any higher risk during this lunch break, nor was there any evidence that the employee was caused to bend, twist or slip while standing up. We believe that the judge misconstrued and misapplied the law in this case.

As commonly used in workers' compensation cases, idiopathic refers to an injury resulting from a pre-existing or underlying condition, infirmity or disease personal to the employee.[5] There was no testimony establishing that the employee had any pre-existing knee condition or weakness. The employee credibly testified that he had no knee symptoms or injuries prior to the popping incident. Nor do the medical records contain any reference to an underlying infirmity or disease that contributed to or caused the injury.[6] (Unappealed finding 8; Mem. at 6, 8; T. 15, 19-21; Exh. C, Exh. D, Exh. E; see Judgment Roll: attachments to 1/30/96 Claim Petition and 6/13/97 Motion to Intervene-Aspen Medical Group.) To the extent, therefore, that the compensation judge's decision reflects a finding that the employee's condition was personal to the employee (see Mem. at 8), in the sense that the knee injury was caused by some underlying infirmity or pre-existing condition, the judge's conclusion that the employee's condition was idiopathic in origin is purely speculative and is not supported by the evidence.

---

[5] Compare, for example, O'Rourke v. North Star Chemicals, Inc., 281 N.W.2d 192, 31 W.C.D. 672 (1979); Barlau v. Minneapolis Moline Power Implement Co., 214 Minn.564, 9 N.W.2d 6, 12 W.C.D. 531 (1943); Koenig v. North Shore Landing, 54 W.C.D. 86 (W.C.C.A. 1996); Rodriguez v. Borton Volvo, slip op. (W.C.C.A. May 22, 1989); Ledbetter v. Michigan Carton Co., 253 N.W.2d 753, 74 Mich. App. 330 (1977). Compare also discussion in 1 Larson, ' 12.00 et seq., generally.

[6] As noted by the dissent, this case did not require the compensation judge to resolve a conflict in medical expert opinion. The sole medical opinion evidence in this case was that offered by the employee. The employer and insurer offered no evidence to support their assertion. (T. 6.) The medical opinion offered by the employee, while limited, does support the employee's claim that his injury was causally related to his employment. (Exh. E: 6/21/95 Health Care Provider Report completed by Dr. Crane.)

If the judge's finding reflects a determination that the employee's knee injury was spontaneous, that is, occurring as the result of some unknown origin or cause, we believe that the compensation judge's legal analysis is incorrect.

Larson states that arising out of cases fall into essentially three categories: (1) those involving risks that are distinctly associated with the employment; (2) those involving risks personal to the employee; and (3) neutral risk cases. The first category includes the obvious kinds of industrial and occupational injuries that readily fall within the increased risk test. At the other end of the spectrum are hazards that are clearly personal to the employee and have no relationship to work. Included in this category are pre-existing, non-occupational diseases and infirmities. Lying between are what Larson classifies as neutral risks, that is, cases where the risk or hazard is neither obviously related to the employment nor strictly personal to the employee. 1 Larson, § 7.00 et seq. Specifically included in this category are unexplained accidents in which no one, including the employee, can explain how the injury occurred. The risk or hazard giving rise to the harm is simply unknown. According to Larson, the majority of jurisdictions find such injuries compensable. 1 Larson, § 7.30, § 10.30 generally, § 10.31(a) and cases cited therein; see for example, Circle K Store No. 1131 v. Industrial Comm'n of Ariz., 165 Ariz. 91, 796 P.2d 893 (1990).

This matter involves a classic unexplained accident, as described by Larson and in the cases cited in his treatise. The employee could not recall twisting or turning his knee, slipping, stepping on a rock, or the like, as he was getting up. He only knew that his knee popped as he stood up to return to work.[7] Such cases give rise to peculiar problems of proof, since the risk or hazard giving rise to the injury is simply unknown. Larson argues that what is unknown is neutral, attributable neither to a risk distinctly associated with the employment, nor a risk clearly personal to the employee, and, that in such cases, the positional-risk doctrine applies. 1 Larson, §§ 10.31(a), 10.31(b), 10.31(c).

We believe that such a result is consistent with Minnesota law. This state does *not* require a showing that the employee's risk or exposure be different from the kinds of risks encountered in daily living, or involve a hazard peculiar to the employee's employment.[8] See,

---

[7] Presumably, if the employee could have testified that he had tripped over something, or had slipped on a rock, or had stepped wrong and twisted his knee as he got up, a sufficient work-connection would have existed.

[8] The dissent cites Gillette injury and occupational disease cases (including heart attack cases) in support of its argument that the employee must prove that his work activities contributed to or caused the injury. These are different types of cases requiring proof different than that required in a case such as this. Both Gillette injury and occupational disease cases, by their very natures, require evidence of a specific connection between the injury and the work duties of the employee. Thus, to prove the existence of a Gillette injury, the employee must provide medical evidence of a causal relationship between the employee's ensuing disability and his or her routine

e.g., Breimhorst, 35 N.W.2d at 728, 15 W.C.D. at 405 (the hazard need not be peculiar to or exclusively associated with employment); Snyder, 152 N.W.2d at 748, 750, 24 W.C.D. at 263-64, 269 (ordinary risks of life, when they occur in the course of employment, are compensable; the term is not restricted to injuries caused by anticipated risks of the employment); Ferrell v. Buffalo Memorial Hospital, 42 W.C.D. 1129 (W.C.C.A. 1990); Okerstrom v. Carter-Day Co., 41 W.C.D. 23 (Minn. 1988). Thus, [w]hen the general public and the employee are equally subject to the injury-causing risk, Minnesota has applied a positional risk test. United Fire & Casualty Co., 510 N.W.2d at 244 (street risk); compare, Lange, id. (unexplained death).

Larson warns of the danger of confusing unexplained injury cases with idiopathic injury cases, especially where a possible idiopathic causation is speculated on but is not supported by the evidence. 1 Larson § 10.31(b). He notes that whenever a non-occupational disease or infirmity, personal to the employee, contributes to the injury, an entirely different set of rules comes into play. Larson explains that unexplained-fall cases begin with a completely neutral origin of the mishap, while idiopathic fall cases begin with an origin which is admittedly personal and which therefore requires some affirmative employment contribution to offset the . . . showing of personal origin. 1 Larson, § 12.11, pp. 3-423 to 3-424; see § 12.14(b), pp. 3-440 to 3-441.

In cases such as this one, the arising out of and arising in the course of requirements are not clearly separable, but are expressed similarly in the circumstances of the injury. Here, the employee was engaged in activities incidental to his employment, at the time of his employment, and at the employer's work site. Specifically, the employee had completed eating his lunch at the work site and was standing up preparatory to returning to his work activities. The employee was at the site solely due to his employment, and was paid for the entire time he was at the work site, including rest and meal breaks. There was no evidence that the employee's injury arose from a non-occupational condition, infirmity or disease, or from activities purely personal to him.[9] The fact that the employee could not explain how the knee injury occurred does not make the fact of its occurrence during work hours, at the work site, while engaged in activities incidental to the employment, any less work-connected. On the facts of this case, in the absence of any evidence that the injury arose in a place or in circumstances personal to the employee, the requirement that the injury have its origin or source in the employment is satisfied. We, accordingly, reverse the

---

work activities. Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960); Steffen v. Target Stores, 517 N.W.2d 579, 50 W.C.D. 464 (Minn. 1994). In an occupational disease case, the employee must specifically prove that the injury arose from a disease peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment. Minn. Stat. § 176.011, subd. 15.

[9] Compare Lange, id. In Lange, the supreme court affirmed the commission's denial of compensation finding that the employee, at the time of his death, was engaged in activities that were, explicitly, **not** part of the conditions, incidents or terms of his employment, but were activities purely personal to him.

compensation judge's determination, in findings 9, 10, 11 and 12, that the employee failed to prove that his injury arose out of his employment.

DISSENTING OPINION

THOMAS L. JOHNSON, Judge

I respectfully dissent. The compensation judge specifically found the employee failed to prove the left knee injury arose out of his employment. This is a factual finding which we are required to affirm unless the finding is clearly erroneous in the sense that it is manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. Northern States Power Co. v. Lyon Food Products, Inc., 304 Minn. 196, 229 N.W.2d 521 (1975). I conclude the finding is supported by the record and I reject the holding of the majority that the employee's injury is compensable as a matter of law.

A personal injury is an injury arising out of the employment. Minn. Stat. § 176.011, subd. 16. The arising out of requirement is a causation test. For an injury to arise out of the employment, there must be a causal connection between the employment and the injury. Lange v. Minneapolis-St. Paul Metro. Airport Comm'n, 257 Minn. 54, 99 N.W.2d 915, 21 W.C.D. 61 (1959). The term arising out of the employment points to the origin or source of the injury. In Nelson v. City of St. Paul, 249 Minn. 53, 55, 81 N.W.2d 272, 275, 19 W.C.D. 120, 123 (1957), the court held the requisite causal connection exists if the employment, by reason of its nature, obligations or incidence may reasonably be found to be the source of the injury-producing hazard. In this case, the compensation judge found the employee failed to prove a causal connection between the employment and the knee injury.[1] Contrary to the majority's assertion, causation is a factual question not a legal question. I believe the majority exceed our appellate function in reversing these factual findings. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984).

The burden of proving that the personal injury arose out of the employment is on the employee. Minn. Stat. § 176.021, subd. 1. The issue in this case is whether the employee sustained that burden. At the hearing, the employee offered no medical or other expert testimony to establish that the work activities in any way caused or contributed to his knee injury. In a case in which the causation of the injury is at issue, each side typically offers expert medical opinion that the injury did or did not result from or have its source in some work-related activity. In such case, it would then be the job of the compensation judge, as trier of fact, to resolve the conflict in

[1] Finding No. 11 states: That the employee has failed to prove, by a preponderance of the evidence, that the May 30, 1995, left knee injury arose out of the employment for the employer. Finding No. 12 states: That the employee has failed to prove, by a preponderance of the credible evidence, that on or about May 30, 1995, he sustained a personal injury to his left knee arising out of and in the course of this employment for the employer and therefore is not entitled to any workers' compensation benefits.

the expert testimony. Questions of medical causation fall within the province of the compensation judge. Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994). Assuming arguendo, there was such testimony in this case, on appeal, this court would be required to affirm the compensation judge's choice of experts providing there was adequate foundation for the medical opinion. See Nord v. City of Cook, 360 N.W.2d 337, 37 W.C.D. 364 (Minn. 1985). If, as the majority holds, this case is compensable as a matter of law, expert medical opinion would be irrelevant and unnecessary. Such a result is illogical and contrary to established case law. See, e.g., Grunst v. Immanuel-St. Joseph's Hosp., 424 N.W.2d 66, 40 W.C.D. 1130 (Minn. 1988) ([i]f an opinion by a medical expert in a respected, recognized field of medicine is given with reasonable medical certainty, that opinion may, if the trier of fact chooses to rely on it, support a causal link between the workers' disability and the job.).

The courts, in discussing the compensability of different types of personal injuries, consistently require proof of a causal relationship between the work and the injury. To prove a Gillette[2] injury, for example, the employee must prove a causal connection between her ordinary work and ensuing disability. Steffen v. Target Stores, 517 N.W.2d 579, 581, 50 W.C.D. 464, 467 (Minn. 1994). To prevail in an occupational disease case, the employee must prove a direct causal connection between the conditions under which the work is performed and the disease. Minn. Stat. § 176.011, subd. 15(a). Similarly, the courts have established certain causation tests which the employee must meet to prove a stress-induced heart attack is a compensable personal injury. See Egeland v. City of Minneapolis, 344 N.W.2d 597, 36 W.C.D. 465 (Minn. 1984); Aker v. State of Minnesota, 282 N.W.2d 533, 32 W.C.D. 50 (Minn. 1979). Even a disease of unknown origin may be a compensable personal injury provided there exists a causal relationship between the disease and the employment. Boldt v. Jostens, Inc., 261 N.W.2d 92, 30 W.C.D. 178 (Minn. 1977). In the case before us, the employee claims he sustained a personal injury to his knee arising out of his employment. I see absolutely no difference between this case and any of the others mentioned above. There is no legal basis to conclude that proof of a causal relationship between the work and the injury is required in the other cases but not in the case before us.

The employee testified at the hearing that I was sitting on lunch break and got up and heard a pop noise. I fell back down and grabbed my knee, had a lot of pain. (T. 14). On appeal, the employee argues it was the act of standing up that caused his knee injury. Although the employee presented no such evidence, that is one inference which the compensation judge could have drawn from the evidence. Such a factual finding could provide the requisite causal connection between the work and the injury. Based on the evidence, however, an equally valid inference may be drawn that the knee injury occurred spontaneously and the work was not a cause of the injury. The compensation judge chose the later inference in finding the employee's left knee injury was idiopathic in origin. (Finding No. 10). In his memorandum, the compensation judge defined idiopathic as personal or spontaneous.[3] (Memo at p. 8.) Based on this finding, the

[2] Gillette v. Harold, Inc., 257 Minn. 313, 101 N.W.2d 200, 21 W.C.D. 105 (1960).

[3] Idiopathic is a medical term, not a legal one. Blacks Law Dictionary does not define the word idiopathic. Dorland's Illustrated Medical Dictionary 649 (26th ed. 1985), defines idiopathic

compensation judge found the employee failed to prove a causal connection between the employment and the injury. The majority reverses the compensation judge's factual finding and concludes the employee's injury is compensable as a matter of law. I cannot agree.

Larson divides the risks causing injury to an employee into three categories: (1) risks distinctly associated with the employment; (2) risks personal to the claimant; and (3) neutral risks. See 1 Arthur Larson and Lex K. Larson, Workers' Compensation Law § 7.00, et seq. (1997). The first category of risks comprise all of those types of injuries and occupational diseases that result from a hazard of the employment. These risks, Larson states, fall readily within the increased risk test. Larson, supra, § 7.10.[4] The second category of risks are those totally unrelated to the employment because they are distinctly personal to the employee. Such risks are not compensable. Examples of personal risks are death from natural causes or an assault by a sworn enemy of the employee motivated by personal animosity. A neutral risk is one that is neither distinctly employment related nor distinctly personal in nature. Larson, supra, § 7.30. Examples of neutral risks, according to Larson, are a stray bullet or lightning.[5]

The majority holds that if the employee's injury was spontaneous, it is compensable as a matter of law because it was an unexplained accident, a type of neutral risk. This case does not involve a neutral risk. Rather, the question is whether the employee's injury was caused by a category 1 employment risk or resulted from a category 2 personal risk. The employee had the burden of proving the former. The compensation judge found the employee failed to sustain that burden. This factual finding should be affirmed.

---

as of unknown origin. This definition is consistent with that used by the compensation judge. Also consistent with the definition used by the compensation judge are Webster's Medical Desk Dictionary 323 (1986) (arising spontaneously or from an obscure or unknown cause) and The American Heritage Dictionary 639 (2E College Ed. 1985) (unknown origin or cause).

[4] Minnesota has specifically adopted the increased risk test. In Kirchner v. County of Anoka, 339 N.W.2d 908, 911, 36 W.C.D. 335, 337 (Minn. 1983), the court held: The arising out of requirement refers to the causal connection between the employment and the injury. This requirement requires a showing of some hazard that increases the employee's exposure to injury beyond that of the general public. This is the increased risk test.

[5] In Aumon v. Breckenridge Tel. Co., 188 Minn. 256, 246 N.W. 889, 7 W.C.D. 349 (1933), the employee was hit by a stray bullet while at work. The court concluded the injury did not arise out of the employment because the risk was not peculiar to the work or inhering in or incident to the employment, as distinguished from a risk or hazard to which all are equally exposed. In State ex rel. Peoples Coal & Ice Co. v. District Court of Ramsey County, 129 Minn. 502, 153 N.W. 119, 17B W.C.D. 179 (1915), an ice delivery man was struck by lightning. The court affirmed an award of compensation because the exposure to the risk of lightning due to the employment was greater than the normal risk to the general public and the employment necessarily accentuated the natural hazard from lightning.

The majority apparently accepts the compensation judge's finding that the employee's injury was idiopathic in origin and resulted spontaneously from an unknown cause. But the majority nonetheless concludes the employee's injury is a compensable personal injury because it was an unexplained accident, again citing Larson. I disagree that this is an unexplained accident.[6] The cause of the employee's knee injury is not unknown; it is only unproven. Certainly, the employee could have presented testimony, either expert or lay, linking the injury to some work activity.[7] That he failed to do so does not make the injury an unexplained accident. If this is the law, every herniated disc, heart attack or other injury sustained by an employee is presumptively compensable so long as it occurred at work. Under such a standard, all an employee need prove is that the injury occurred while at work.[8] The employer and insurer must then introduce evidence to rebut the presumption.[9] Such a result improperly removes the arising out of requirement from Minn. Stat. § 176.011, subd. 16, and places the burden of proof on the employer and insurer contrary to Minn. Stat. § 176.021, subd. 1 and 1a.

Finally, the majority states this case is compensable because the positional risk test governs. Again, I disagree. Larson states the positional risk applies when the employment obligations place the employee in the particular place at the particular time when he or she was injured by some neutral force, meaning by neutral neither personal to the claimant nor distinctly associated with the employment. Larson, supra, § 6.50. In Minnesota, the positional risk test has been applied only in street risk cases. See, e.g., Kennedy v. Thompson Lumber Co., 223 Minn. 277, 26 N.W.2d 459, 14 W.C.D. 353 (1947). In such cases, the employee is off the employment premises, on the street, and is injured by a neutral risk such as a car.[10] The employee

---

[6] The most common example of an unexplained accident is the unexplained fall case where the employee trips and falls on a level floor for no discoverable reason and is injured. Larson, § 10.31(a), pp. 3-104 to 3-116. However, it is the reason for the fall that is unexplained not the cause for the injury; the injury was caused by the fall. Here, it is the cause for the injury that is unexplained.

[7] I do not intend to suggest that expert testimony is required to prove a causal connection between the employment and the injury. See e.g., Kelly v. C.M.I. Refrigeration, 231 N.W.2d 490, 27 W.C.D. 951 (1975). A medical doctor is, however, competent to render an opinion on the issue. Grundt v. Immanuel-St. Joseph's Hosp., supra.

[8] The majority states: The fact that the employee could not explain how the knee injury occurred does not make the fact of its occurrence during work hours at the work site while engaged in activities incidental to the employment, any less work-connected.

[9] The majority states: in the absence of any evidence that the injury arose in a place or in circumstances personal to the employee, the requirement that the injury have its origin or source in the employment is satisfied.

[10] Examples of such cases are Nelson, 249 Minn. 53, N.W.2d 272, 19 W.C.D. 120

was not off the premises on the street and no neutral risk was involved. This is not a positional or street risk case so that doctrine is inapplicable here. Rather, the increased risk test applies. The compensation judge properly utilized that test and found the employee failed to prove the injury arose out of his employment.

Whether there exists the requisite causal connection between the work activities and the disability is a question of fact. Bender v. Dongo Tool Co., 509 N.W.2d 366, 49 W.C.D. 511 (Minn. 1993); Anderson v. City of Minneapolis, 258 Minn. 221, 103 N.W.2d 397, 21 W.C.D. 258 (1960). Until the time comes when medical knowledge has progressed to such a point that experts in the field of medicine can agree, causal relation in determining compensation injury or disease will have to remain in the province of the trier of fact. Ruether v. State, 455 N.W.2d 475, 478, 42 W.C.D. 1118, 1123 (Minn. 1990) (quoting Golob v. Buckingham Hotel, 244 Minn. 301, 304-05, 69 N.W.2d 636, 639, 18 W.C.D. 275, 278 (1955)). See also Felton v. Anton Chevrolet, 513 N.W.2d 457, 50 W.C.D. 181 (Minn. 1994). Resolution of factual disputes is the function of the compensation judge. The compensation judge here resolved the factual dispute. The compensation judge's findings are not clearly erroneous or manifestly contrary to the weight of the evidence. Accordingly, I would affirm.

(employee school teacher while walking to work but not yet on the employment premises was hit by a baseball batted by a student on the school grounds) and Bookman v. Lyle Culvert & Road Equip. Co., 153 Minn. 479, 190 N.W. 984, 1 W.C.D. 213 (1922) (the employee was injured while carrying letter of her employer to a street mailbox and was struck by a car. The court held that an injury to an employee, engaged in his employer's service in a duty calling him upon the street, by what is usually called a street risk to which his work subjects him, arises as a matter of law out of his employment although others so employed, or the public using the streets, are subject to such risks).