

SUPREME COURT OF NEVADA

Rio All Suite Hotel and Casino v. Phillips, 126 Nev. 346

240 P.3d 2 (2010) · No. No. 53191 · Decided September 30, 2010

SUMMARY

The Nevada Supreme Court held that an employee injured by a neutral risk must satisfy the increased-risk test to establish that the injury arose out of employment under NRS 616C.150(1). The court concluded that Kathryn Phillips's repeated, mandatory use of workplace stairs exposed her to a greater risk than that faced by the general public, making her ankle injury compensable. The court affirmed the district court's denial of judicial review of the appeals officer's decision.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, J.; Parraguirre, C.J.; Douglas, J.; Cherry, J.; Saitta, J.; Gibbons, J.
JURISDICTION	Nevada
DECIDED	September 30, 2010
DOCKET	No. 53191
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court order denying a petition for judicial review of a Nevada Department of Administration appeals officer's workers' compensation decision.
STANDARD OF REVIEW	The court applies the same analysis as the district court when reviewing a district court's denial of a petition for judicial review of an agency decision. It determines whether the agency decision was arbitrary or capricious or an abuse of discretion, defers to agency factual findings supported by substantial evidence, and reviews questions of law de novo.
PRECEDENTIAL VALUE	Published Nevada Supreme Court en banc opinion; precedential.
PARTIES	Rio All Suite Hotel and Casino, Sedgwick CMS/Cannon Cochran Management Services, Inc. v. Kathryn Phillips

TOPICS

workers compensation

judicial review of agency action

administrative law

employment law

PRACTICE AREAS

workers compensation

administrative law

employment law

QUESTIONS PRESENTED

1. What test governs whether an injury caused by a neutral risk arose out of employment under NRS 616C.150(1)?
2. Whether Phillips's ankle injury, sustained while repeatedly using a workplace staircase during mandatory breaks, arose out of her employment.
3. Whether an unexplained fall at work may be compensable under Nevada workers' compensation law.

HOLDINGS

1. Nevada adopts the increased-risk test for determining whether an injury caused by a neutral risk arose out of employment under NRS 616C.150(1). An employee must show that employment exposed her to a risk greater than that faced by the general public.
2. Phillips's ankle injury arose out of her employment because the mandatory and frequent use of the workplace stairs exposed her to a significantly greater risk of injury than that faced by the general public.
3. Whether a workplace fall is explained or unexplained is irrelevant under the increased-risk test; an unexplained fall may be compensable if the employee establishes that employment exposed her to a risk greater than that faced by the general public.

KEY QUOTATIONS

“In situations in which an employee’s injury is caused by a neutral risk—a risk that is not personal to the employee or solely employment-related—we adopt the increased-risk test, which evaluates whether the employee was exposed to a risk greater than that faced by the general public.” (240 P.3d 3)

“Because its application is strikingly similar to the application of the positional-risk test that we have already rejected, we also reject the actual-risk test, and instead adopt the increased-risk test to determine whether an injury resulting from a neutral risk is compensable.” (240 P.3d 6)

“The key inquiry is whether the risk faced by the employee was greater than the risk faced by the general public.” (240 P.3d 7)

FACTUAL BACKGROUND

Kathryn Phillips, a casino employee, injured and fractured her ankle while descending an employee staircase during a mandatory break. The stairs were not defective and contained no debris, and there was no evidence that a personal condition caused her fall. Phillips worked eight-hour shifts with six mandatory breaks and was required to use two flights of stairs to reach the employee break room.

PROCEDURAL HISTORY

Sedgwick CMS denied Phillips's workers' compensation claim after she fractured her ankle while descending stairs at work. A hearing officer affirmed the denial, but an appeals officer reversed and found that the injury arose out of and in the course of employment. The district court denied Rio and Sedgwick's petition for judicial review, and they appealed to the Supreme Court of Nevada.

DISPOSITION

affirmed

CASES CITED

- Bob Allyn Masonry v. Murphy, 124 Nev. 279, 183 P.3d 126 (2008)
- Weaver v. State, Department of Motor Vehicles, 121 Nev. 494, 117 P.3d 193 (2005)
- Law Offices of Barry Levinson v. Milko, 124 Nev. 355, 184 P.3d 378 (2008)
- Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 939 P.2d 1043 (1997)
- Mitchell v. Clark County School District, 121 Nev. 179, 111 P.3d 1104 (2005)
- K-Mart Corp. v. Herring, 188 P.3d 140 (Okla. 2008)
- Bentt v. Department of Employment Services, 979 A.2d 1226 (D.C. 2009)
- Illinois Consolidated Telephone Co. v. Industrial Commission, 314 Ill. App. 3d 347, 732 N.E.2d 49 (2000)
- Bivins v. St. John's Regional Health Center, 272 S.W.3d 446 (Mo. Ct. App. 2008)
- Green Hand Nursery, Inc. v. Loveless, 55 Va. App. 134, 684 S.E.2d 818 (2009)
- Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005)
- Nascote Industries v. Industrial Commission, 353 Ill. App. 3d 1056, 820 N.E.2d 531 (2004)
- Haley v. Springs Global U.S., Inc., 54 Va. App. 607, 681 S.E.2d 62 (2009)
- Marion Correctional Center v. Henderson, 20 Va. App. 477, 458 S.E.2d 301 (1995)