INJURIES ARISING OUT OF AND IN THE COURSE OF THE EMPLOYMENT

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I. INTRODUCTION

Essential to recovery in a worker's compensation case is proof that an employee has sustained a personal injury arising out of and in the course of the employment. The phrase "in the course of" is distinct from "personal injury" and "arising out of," and involves an analysis of the time, place and circumstances of the injury.[1] "Arising out of" refers to the cause and origin of an injury.[2]

The term "injury" or "personal injury" refers to any impairment of health which can be causally related to the employment.[3] The term "injury" does not, however, include an occupational disease or, in most cases, an occupational hearing loss.[4] The determination of whether or not an employee

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1. Cedar Rapids Community School v. Cady, 278 N.W.2d 298, 299 (Iowa 1979); Golay v. Keister Lumber Co., 175 N.W.2d 385, 386 (Iowa 1970); Beuhner v. Hauptly, 161 N.W.2d 170, 171 (Iowa 1968); Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 491, 73 N.W.2d 27, 29 (1955).

2. *See* Cady, 278 N.W.2d at 299.

3. Almquist v. Shenandoah Nurseries, 218 Iowa 724, 732, 254 N.W. 35, 39 (1934). The term is not well defined by statute. Iowa Code sections 85.61(5) and (6) (1981) state as follows:

> 5. The words *injury* or *personal injury* shall be construed as follows:
> a. They shall include death resulting from personal injury.
> b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.
> 6. The words *personal injury arising out of and in the course of the employment* shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

For an excellent earlier article on this topic, *see* BOYD, THE IOWA LAW OF WORKMEN'S COMPENSATION 40 (1967).

4. IOWA CODE § 85.61(5)(b) (1981). Occupational diseases are covered by Iowa Code chap-

has sustained a personal injury arising out of his or her employment involves frequently inseparable medical and legal concepts.

The employee has the burden of proving that he has sustained a personal injury arising out of and in the course of his employment.[5] This requires proof that an employment-related incident was a proximate cause of the health impairment upon which the claim is based.[6] For a cause to be "proximate" it need only be a substantial factor in bringing about the result, and need not be the sole cause.[7]

The question of medical causation is essentially within the domain of expert testimony; and testimony indicating a probable causal relationship is necessary.[8]

II. Personal Injury

The term "personal injury" is not defined in the Iowa Workers' Compensation Act. The leading Iowa case defining the term is *Almquist v. Shenandoah Nurseries*[9] which states as follows:

> A personal injury, contemplated by the Workman's Compensation Law, obviously means an injury to the body, the impairment of health, or a disease, not excluded by the act, which comes about, not through the natural building up and tearing down of the human body, but because of the traumatic or other hurt or damage to the health or body of an em-

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ter 85A (1981). Occupational hearing loss which occurs over time and not from a single incident of trauma is covered by Iowa Code chapter 85B (1981). Hearing loss due to an explosion or other traumatic injury is still covered under Iowa Code chapter 85 (1981). To establish causation in an occupational disease case, the claimant must meet the statutory requirements of Iowa Code section 85A.8 (1981).

As stated in *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181 (Iowa 1980), the requirements are: "First, the disease must be causally related to the exposure to harmful conditions of the field of employment. . . . Secondly, those harmful conditions must be more prevalent in the employment concern than in everyday life or in other occupations." *Id.* at 190.

5. McDowell v. Town of Clarksville, 241 N.W.2d 904, 908 (Iowa 1976); Bodish v. Fisher, Inc., 257 Iowa 516, 519, 133 N.W.2d 867, 868 (1965).

6. Sondag v. Ferris Hardware, 220 N.W.2d 903, 905 (Iowa 1974).

7. Blacksmith v. All-American, Inc., 290 N.W.2d 348, 354 (Iowa 1980). *See also* Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974). There is no requirement that the injury be the sole proximate cause. Langford v. Keller Excavating & Grading, Inc., 191 N.W.2d 667, 670 (Iowa 1971).

8. Bradshaw v. Iowa Methodist Hosp., 251 Iowa 375, 383, 101 N.W.2d 167, 172 (1960). *But see* Giere v. Aase Haugen Homes, Inc., 259 Iowa 1065, 1072, 146 N.W.2d 911, 915 (1966), wherein the court states:

> [W]hile expert testimony that a condition could be caused by a given injury is in itself insufficient to support a finding as to causal connection, such testimony coupled with additional nonexpert testimony that claimant was not afflicted with the same condition prior to accident or injury in question is sufficient.

The court points out, however, that such testimony is sufficient to sustain an award, but does not compel an award. *Id.*

9. 218 Iowa 724, 254 N.W. 35 (1934).

> ployee. . . . The injury of the human body here contemplated must be something, whether an accident or not, that acts extraneously to the natural processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body.[10]

An injury, therefore, does not include conditions incident to the general processes of nature or ordinary wear and tear which, under any rational work, would be likely to progress so as to finally disable the employee. An injury need not, however, be preceded by or arise from an accident, special incident or unusual occurence.[11] Proof of a personal injury requires only competent medical evidence of an employment activity or incident which is a proximate cause of the health impairment.[12]

It should be apparent that a sudden external injury to the body would constitute a personal injury. Difficulty occurs, however, when the health impairment results from physical exertion or exposures over a period of time. Each may be deemed to constitute a personal injury,[13] yet, the determination is frequently decided by whether the resulting physical harm "arose out of the employment." In other words, when it is shown that the health impairment did not result from the natural processes of nature, but is causally related to the employment, the injury arises out of the employment.[14]

The aggravation of a preexisting health impairment may also constitute a personal injury,[15] because the employer takes the employee subject to all

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10. *Id.* at 752, 254 N.W. at 39.

11. *See* text accompanying note 9 *supra.*

12. Bradshaw v. Iowa Methodist Hosp., 251 Iowa at 383, 101 N.W.2d at 172.

13. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980)(employee suffered from thrombophlebitis related to operation of a truck in his employment); Burt v. John Deere Waterloo Tractor Works, 247 Iowa 691, 73 N.W.2d 732 (1956)(employee suffered unspecified lung disease related to dust and hot, rancid air to which the claimant was exposed at his employment); Jacques v. Farmers Lumber & Supply Co., 242 Iowa 548, 47 N.W.2d 236 (1951)(aggravation of preexisting pulmonary tuberculosis by spray painting); Littell v. Lagomarcino Grupe Co., 235 Iowa 523, 17 N.W.2d 120 (1945)(employee died of acute myocarditis related to usual, but strenuous, work activity aggravating pre-existing condition); Black v. Creston Auto Co., 225 Iowa 671, 281 N.W. 189 (1938)(employee was exposed to fumes over a period of two years resulting in lead poisoning); Almquist v. Shenandoah Nurseries, 218 Iowa 724, 254 N.W. 35 (1934)(employee died of complications of a perforated ulcer related to usual strenuous lifting in employment); Dille v. Plainview Coal Co., 217 Iowa 827, 250 N.W. 607 (1934)(coal miner exposed to noxious fumes over a period of a few weeks causing increased stress on heart and resulted in fatal heart condition).

14. Almquist v. Shenandoah Nurseries, 218 Iowa at 736, 254 N.W. at 41. *But cf.* Anderson v. Oscar Mayer & Co., 217 N.W.2d 531 (Iowa 1974)(employee performed heavy lifting in his work, but the evidence was held to be insufficient to show a causal relationship between the work and a herniated disc).

15. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Ziegler v. U.S. Gypsum Co., 252 Iowa 613, 106 N.W.2d 591 (1960); Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920).

active or dormant health impairments.[16] The fact that the employee is more susceptible to injury is not a defense.[17] In such cases, however, recovery is limited to the extent to which the personal injury has caused additional disability.[18]

III. Arising Out Of

The concept of "arising out of" involves an analysis of risks properly attributable to employment and medical causation in fact. Simply because the health impairment becomes manifest while the employee is in the course of his employment does not satisfy the "arising out of" test.[19] The health impairment may simply be the result of a personal condition not associated with the employment.[20]

Risks which are closely associated with the employment and increase the risk of injury clearly arise out of the employment. The risk of injury to an employee who operates machinery or is exposed to harmful substances, for example, is obviously greater than the risk to the public generally.[21] This concept applies to cases involving heat stroke, electric shock from lightning[22]

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16. In *Ziegler*, 252 Iowa at 620, 106 N.W.2d at 595, the court stated: "It is, of course, well settled that when an employee is hired, the employer takes him subject to any active or dormant health impairments incurred prior to this employment. If his condition is more than slightly aggravated, this resultant condition is considered a personal injury within the Iowa law."

17. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). The court affirmed an award based upon a lifting incident which aggravated a pre-existing osteoarthritic condition. *Id.* The court stated:

> There is evidence plaintiff had osteoarthritis from a time prior to his injury and defendant contends any disability at the time of the hearing was caused by the disease, not the injury. While plaintiff was not entitled to compensation for the results of a pre-existing disease (Code section 85.61, (5)(c)), mere existence of the disease at the time of the injury is not, as defendant concedes, a defense. If plaintiff was diseased and his condition was aggravated, accelerated, worsened or "lighted up" by the injury so it resulted in the disability found to exist, plaintiff was entitled to recover.

Id. at 908, 76 N.W.2d at 760-61.

18. DeShaw v. Energy Mfg. Co., 192 N.W.2d 777 (Iowa 1971).

19. Almquist v. Shenandoah Nurseries, 218 Iowa at 731, 254 N.W. at 39.

20. Pattee v. Fullerton Lumber Co., 220 Iowa 1181, 263 N.W. 839 (1935). In this case the employee was subject to nosebleeds. His condition caused him to become dizzy and fall in the course of his employment, resulting in his death. The court affirmed a denial of compensation, holding that the injury did not arise out of the employment, but resulted from a condition personal to the employee. *See also* McDowell v. Town of Clarksville, 241 N.W.2d 904 (Iowa 1976)(development of aneurysm not related to employment); Musselman v. Central Tel. Co., 261 Iowa 352, 154 N.W.2d 128 (1967)(vascular insufficiency unrelated to employment); Bocian v. Armour & Co., 244 Iowa 304, 56 N.W.2d 900 (1953)(myocardial infarction unrelated to employment); Featherson v. Continental Keller Co., 225 Iowa 119, 279 N.W. 432 (1938)(death from lobar pneumonia unrelated to trauma to leg); Slack v. Percival Co., 198 Iowa 54, 199 N.W. 323 (1924)(no aggravation of pre-existing cancer by traumatic injury).

21. 1 A. Larson, The Law of Workmens Compensation § 7.10 (1978).

22. In *Griffith v. Cole Bros.*, 183 Iowa 415, 165 N.W. 577 (1918), the court reversed an

and heart attack.[23] In *Sondag v. Ferris Hardware*,[24] the Iowa Supreme Court set out two concepts of work-related causation applicable to a claimant with a pre-existing circulatory or heart condition:

> In the first situation the work ordinarily requires heavy exertions which, superimposed on an already-defective heart, aggravates or accelerates the condition, resulting in compensable injury. . . . In the second situation compensation is allowed when the medical testimony shows an instance of unusually strenuous employment exertion, imposed upon a pre-existing diseased condition, results in heart injury.[25]

These tests, of course, require that the employee's exposure to risk be greater than that of the general public.

Furthermore, the fact that an employee is subject to the conduct of fellow employees also increases the risk; and, therefore, injuries caused by the

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award of compensation based on injuries sustained by an employee who was struck by lightning. In finding that the injury did not arise out of the employment the court stated:

> It must appear by a preponderance that there is some causative connection between the injury and something peculiar to the employment (cite omitted) that it resulted from some risk reasonably incident to the employment, because "out of" involves the idea that the injury is in some sense due to the employment (cite omitted)—a causative danger peculiar to the work, and not "common to the neighborhood," an injury fairly traceable to the employment as a contributing cause,—to some hazard other than one to which the workman would have been equally exposed though in a different employment (cite omitted); a hazard peculiar to the business which is "the immediate cause" of the injury (cites omitted); an injury due to something more than the normal risk to which all are subject, which at the least, means that the employment necessarily accentuates the natural hazard attendant upon work done in the course of the employment (cite omitted).

Id. at 427, 165 N.W. at 581. *See also* West v. Phillips, 227 Iowa 612, 288 N.W. 625 (1940) (heat exhaustion); Wax v. Des Moines Asphalt Paving Corp., 220 Iowa 864, 263 N.W. 333 (1935) (sunstroke); Brown v. Rath Packing Co., 219 Iowa 9, 257 N.W. 411 (1934) (heat exhaustion); and Belcher v. Des Moines Electric Co., 208 Iowa 263, 225 N.W. 404 (1929) (heat exhaustion). In *Wax* the court stated:

> The general rule seems to be well stated . . .: If the employment brings with it no greater exposure to injurious results from natural causes, and neither contributes to produce these nor to aggravate their effect, as from lightning, severe heat or cold, than those to which persons generally in that locality, whether so employed or not, are equally exposed, there is no causal connection between the employment and the injury. But where "the employment brings a greater exposure and injury results," the injury does arise out of the employment.

Wax, 220 Iowa at 865, 263 N.W. at 334. The increased-risk doctrine is still the prevalent test in the United States. 1 A. LARSON, *supra* note 21, § 6.30 at 3-4.

23. *See* Note, *Workmen's Compensation for Heart Attacks in Iowa and its Bordering States*, 30 DRAKE L. REV. 873 (1981).

24. 220 N.W. 2d 903 (Iowa 1974).

25. Sondag v. Ferris Hardware, 220 N.W.2d 903, 905 (Iowa 1974). The court remanded the case to the Iowa Industrial Commissioner for reconsideration of testimony that the continuation of work activity after the onset of symptoms may have increased the damage to the heart. *Id.* If so, the claimant would have yet another basis for recovery. *Id.*

negligent acts of co-employees "arise out of the employment."[26] Unless the act is willful and for reasons personal to the employee,[27] the same principle applies to assault by fellow employees.[28] In *Cedar Rapids Community School v. Cady*,[29] the Iowa Supreme Court affirmed an award in a case in which an employee was killed by a deranged fellow employee. In that case, the fellow employee's mental state precluded a finding of willful injury.[30] The court reasoned as follows: "An employee who associates with other employees is exposed to the risk of injury arising from their acts or omissions. No difference in principle exists when the injury is caused by conduct resulting from an insane delusion rather than negligence or chance mishap."[31]

Negligent treatment following an employment-related injury[32] or complications from treatment also "arise out of" the employment.[33] Since the injury creates the need for medical treatment and associated services, all of the consequences naturally flowing from that treatment, including the negligence of third parties, is deemed to be a proximate result of the injury.[34]

The risk of traversing a public sidewalk, street or stairway would generally be no greater to one engaged in employment than to the public generally. Nevertheless, injuries resulting from such activities—so called street risks—are deemed to arise out of the employment if the injuries are natural incidents of the employment.[35]

Finally, the principle of allowing recovery for psychiatric conditions resulting from traumatic injury has long been recognized.[36] This principle includes suicide if the employee's mental condition "was such that he was motivated by an uncontrollable impulse or in delirium of frenzy, without

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26. Cedar Rapids Community School v. Cady, 278 N.W.2d 298 (Iowa 1979).

27. IOWA CODE § 85.16(3) (1981). The statute bars compensation for an injury caused "[b]y the willful act of a third party directed against the employee for reasons personal to such employee." *Id.*

28. Everts v. Jorgensen, 227 Iowa 818, 289 N.W. 11 (1939).

29. 278 N.W.2d 298 (Iowa 1979). *Cady* may be an example of the positional-risk doctrine. *See* 1 A. LARSON, *supra* note 21, §§ 10.00-.33(d). But, the doctrine is not necessary for the result.

30. Cady, 278 N.W.2d 298.

31. See *id.* The dissenting justice stated: "This bizarre occurrence was unrelated to any ordinary employment-connected hazard. As a matter of law, this occurrence cannot be said to meet the test: Whether the 'injury follow[ed] as a natural incident of the work.' " *Id.* at 303 (Allbee, J., dissenting).

32. Hunt v. Ernzen, 252 N.W.2d 445 (Iowa 1977); Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 101 N.W.2d 167 (1960).

33. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (Iowa 1957); Lindeken v. Lowden, 229 Iowa 645, 295 N.W. 112 (1941).

34. Bousfield, 249 Iowa at 69, 86 N.W.2d at 113.

35. Walker v. Speeder Machinery Corp., 213 Iowa 1134, 240 N.W. 725 (1932). This is an application of the actual-risk doctrine. *See also* 1 A. LARSON, *supra* note 21, § 6.40 at 3-4.

36. Deaver v. Armstrong, 170 N.W.2d 455 (Iowa 1969); Schofield v. White, 250 Iowa 571, 95 N.W.2d 40 (1959).

conscious volition to produce death."[37] There is no reason to suppose that Iowa would not follow other jurisdictions in also allowing recovery where sudden stress or fright produces the mental condition.[38] In cases where psychiatric conditions result from long-term stress, however, the court may require a showing of unusual or severe stress, but there are no current Iowa cases in point.[39] The definition of injury set out in *Almquist*,[40] however, would not dictate this result.

IV. In The Course Of

An injury occurs in the course of employment when it is "within the period of employment, at a place where the employee reasonably may be in the performance of his duties and while he is fulfilling those duties or engaged in doing something incidental thereto."[41] The applicable statute is Iowa Code section 85.61(6) which provides as follows:

> The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Both the statute and case law make it clear that injuries occurring on the premises of the employer are generally in the course of the employment.[42] The employer's premises extend to areas used by the general public if the areas are so closely connected in time, location and employee usage to the work premises that they can be deemed to be within the zone of protection of the statute; or if the employer exercises control over adjacent areas.[43]

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37. Schofield, 250 Iowa at 581, 95 N.W.2d at 46. *See also* Iowa Code section 85.16(1) (1981) which bars claims for compensation for an injury caused "[b]y the employee's willful intent to injure himself or to willfully injure another."

38. *See* 1B A. Larson, *supra* note 21, § 42.20 at 7-93.

39. *But see* Carter v. General Motors Corp., 361 Mich. 577, 106 N.W.2d 105 (1960). Professor Larson aptly summarizes this case as follows:

> Here we have the modern industrial tragedy, not at the executive level, but at the level of the assembly line, with a set of facts recalling Charlie Chaplin's losing battle with this inhuman antagonist in *Modern Times*. The claimant, who had considerable emotional trouble in his background to start with, simply could not keep up with the assembly line, as a result of which he found himself constantly berated by his foreman. This in turn filled him with dread of losing his job, and the final result was a disabling psychosis. The Supreme Court of Michigan upheld an award.

1B A. Larson, *supra* note 21, § 42.20 at 7-93.

40. *See* text accompanying note 3 *supra*.

41. Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 492, 73 N.W.2d 27 (1956); *See also* Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 226 N.W. 719 (1929).

42. Iowa Code § 85.61(6) (1981). *See also* text accompanying note 39 *supra*.

43. Frost v. S. S. Kresge Co., 299 N.W.2d 646, 649 (Iowa 1980).

Off-premises injuries may also occur in the course of the employment if the employee is engaged in furthering the employer's business at the time of the injury.[44] Therefore, employees traveling for their employers[45] or attending authorized social events[46] are in the course of their employment. This principle applies even when the employee is attending to his personal needs, such as obtaining meals, seeking refreshment or taking shelter.[47]

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44. Iowa Code § 85.61(6) (1981). *See also* Bulman v. Sanitary Farm Dairies, 247 Iowa at 492, 73 N.W.2d at 30.

45. Walker v. Speeder Mach. Corp., 213 Iowa 1134, 240 N.W. 725 (1932).

46. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979). The claimant in this case attended a customer appreciation dinner which was authorized by the employer. The term "required" as used in Iowa Code section 85.61(6) was interpreted by the court as follows:

> When faced on prior occasions with the argument that an injured employee's presence at the scene of an accident was not "required," this court has adopted a liberal interpretation of the "course of employment" criterion. We have thus said that
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> > [a]n injury occurs in the course of the employment when it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. *An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.*
>
> [cites omitted].
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> In applying the statutory forerunner of section 85.61(6) to injuries suffered by a salesman at a social event, this court looked to the purpose and nature of the event to determine if the employer's business "required" the salesman's presence. *Linderman v. Cownie Furs*, 234 Iowa 708, 710, 13 N.W.2d 677, 679. . . . The test is whether the act is "in any manner dictated by the course of employment to further the employer's business." . . .
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> As a reasonable limitation on the scope of employment-related entertainment, "the authority of the particular employee to undertake entertainment or recreational activities on behalf of his employer must be genuine." 1A A. Larson, Workmen's Compensation § 22.21, at 5-82 (1978). Larson states that the factors relevant to a determination of the existence of such authority include the degree to which the recipient of the entertainment is in a position to make decisions that benefit the employer, whether authority was actually conferred on the employee to engage in the entertainment, and the extent to which the employer pays for the cost of the entertainment. . . .

See generally Note, *The Compensability of "Recreational" Injuries in Iowa: The Company Party/Softball Team Could Be Costly*, 30 Drake L. Rev. 895 (1981).

47. Walker v. Speeder Mach. Corp., 213 Iowa at 1147, 240 N.W. at 729; Crees v. Sheldahl Tel. Co., 258 Iowa 292, 299, 139 N.W.2d 190, 194 (1965).

On the other hand, in order to support a finding that the act occurred in the course of the employment, the act must have a close causal connection with, and be incident to the employment.[48] If, for example, the employee is injured in an activity involving solely his personal amusement, or if he substantially deviates from the prescribed route on a personal mission, the employee may be considered outside the course of his employment.[49]

Much of the litigation involving off-premises injuries has involved the "going and coming rule." Under this rule, an employee is generally not considered to be in the course of his employment when going to work or coming from work.[50] The Iowa Supreme Court has adopted several exceptions to this general proposition. If the employer provides the transportation;[51] if the employee is engaged in a special errand or mission on behalf of the employer;[52] if the employee is engaged in a dual purpose,[53] furthering both the interests of the employer and the employee personally; or if the employee's only available route to work creates a special hazard or risk,[54] the employee will be considered to be in the course of his employment. In addition, if the employee must travel between two separate premises of the employer, for example from an employee parking lot across public property to a plant, such travel is considered to be in the course of the employment.[55] Off-premises meals on the employee's time are not deemed to be in the course of the employment, unless the duration of the break or other circumstances unduly restrict the employee's freedom of movement.[56]

Finally, areas of workers' compensation law which tend to mix the "arising out of" requirement with the "in the course of" requirement are the unusual and rash acts, prohibited conduct and horseplay doctrines. In the past, such acts have been deemed a complete bar to compensation, because each act has been considered either a risk not contemplated by the employment or an abandonment of the course of the employment. In *Buehner v. Hauptly*,[57] an employee was fatally injured when he fell while using a hoist

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48. Volk v. International Harvestore Co., 252 Iowa 298, 106 N.W.2d 649 (1960). An employer on an out-of-town business trip was injured while engaged in personal amusement with two co-employees. *Id.*

49. *Id.* at 652.

50. Halstead v. Johnson's Texaco, 264 N.W.2d 757, 759 (Iowa 1978) (employee away from premises on lunch hour); Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 73 N.W.2d 27 (1956).

51. *See* Pribyl v. Standard Electric Co., 246 Iowa 333, 67 N.W.2d 438 (1954). The court held that a contractual obligation to furnish transportation was sufficient to bring the employee within the course of employment while traveling to work in a car pool. *Id.*

52. Kyle v. Green High School, 208 Iowa 1937, 1939, 226 N.W. 71, 72-73 (1929). *But see* Otto v. Independent School Dist., 237 Iowa 991, 993, 23 N.W.2d 915, 916 (1962).

53. Golay v. Keister Lumber Co., 175 N.W.2d 385, 388 (Iowa 1970); Rubendall v. Brogan Construction Co., 253 Iowa 652, 113 N.W.2d 265, 267 (1962).

54. Frost v. S.S. Kresge Co., 299 N.W.2d 646, 649 (Iowa 1980).

55. *Id.*

56. Halstead v. Johnson's Texaco, 264 N.W.2d at 759.

57. 161 N.W.2d 170 (Iowa 1968).

as an elevator. The employer specifically prohibited such activity and repeatedly told the employee not to use the hoist.[58] The fact that the employee proceeded to engage in the conduct was held sufficient to take the employee out of the course of his employment.[59] An employee who voluntarily participates in horseplay, as opposed to being an unwilling victim, may also be said to have abandoned his employment or assumed a risk not contemplated by the employment.[60]

The "unusual and rash act" doctrine of *Christensen v. Hauff Brothers*,[61] established the principle that an injury resulting from a risk not contemplated by the employment does not arise out of the employment. The Iowa Supreme Court overruled this doctrine in *Hawk v. Jim Hawk Chevrolet-Buick, Inc.*,[62] stating: "Section 85.16 clearly does not contemplate such a bar to recovery benefits. Judicial engrafting of the unusual and rash act doctrine to workers' compensation law distorts the statute by inserting a defense which, . . . is barely distinguishable from the admittedly inapplicable rules of contributory negligence and assumption of risk."[63]

The effect of *Hawk* on prohibited conduct and horseplay cases is uncertain. In *Hawk*,[64] the employee, despite rash conduct, was returning home from a business trip, and was arguably furthering his employer's business.[65] In the horseplay and prohibited conduct cases, however, no such contention can be made. If treated as an "in the course of" question, the distinction

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58. *Id.*

59. In *Buehner v. Hauptly*, 161 N.W.2d at 173, the court stated:

> Our decisions—as well as those of other jurisdictions—are not completely consistent in dealing with so-called violation of instruction cases. It is sometimes a thin line which divides a finding that the ultimate act itself is prohibited from one that the act was proper and was merely performed contrary to instructions. In the first case compensation is denied; in the second it is paid. We hold a reasonable interpretation of the facts here leads inevitably to the conclusion decedent was at a prohibited place—on the hoist—and was not merely doing a prescribed task—getting to the ground from the platform—in a prescribed manner.

60. Wittmer v. Dexter Mfg. Co., 204 Iowa 180, 182, 214 N.W. 700, 701 (1927). The court held that the employee's injury did not "arise out of" his employment. *See also* Ford v. Barcus, 261 Iowa 616, 155 N.W.2d 507 (Iowa 1968). For a discussion of the problems in analyzing these cases see Davis, *The Connection of Injury to Employment* 53 (1967).

61. 193 Iowa 1084, 1088, 188 N.W. 851, 854 (1922). In this case, the employee, while on a business trip, was fatally injured while attempting to board a moving flat car in order to return home. In denying compensation, the court held that such "an unusual and rash act" could not be fairly traced to any employment related hazard and that therefore the fatal injuries did not arise out of his employment. *But see* Pohler v. T. W. Snow Construction Co., 239 Iowa 1018, 33 N.W.2d 416 (1948).

62. 282 N.W.2d 84 (Iowa 1970).

63. *Id.* at 91.

64. *Id.* In *Hawk*, the employee was fatally injured when he piloted a private plane on return from a business trip. He took off at night in bad weather after having several drinks. He was not qualified to operate the plane under instrument flight conditions. *Id.*

65. *Id.*

between rash acts, prohibited conduct and horseplay becomes more clear. If, for example, the employee is in a place where he is prohibited from being, or if he substantially deviates from his employment by engaging in horseplay, then the employee can be said to have abandoned his employment and, consequently, he is not in the course of his employment.[66]

66. See 1A LARSON, *supra* note 21, §§23.00 and 31.00.