STATE OF MINNESOTA

IN SUPREME COURT

A17-1816

Workers' Compensation Court of Appeals

McKeig, J.
Dissenting, Gildea, C.J., Anderson, J.
Took no part, Thissen, J.

Laurie A. Roller-Dick,

Respondent,

vs.

Filed: August 8, 2018
Office of Appellate Courts

CentraCare Health System and
SFM Mutual Companies,

Relators.

Raymond R. Peterson, Scott A. Wilson, McCoy Peterson, Ltd., Minneapolis, Minnesota, for respondent.

Kristen Ohlsen, Jacob R. Colling, Aafedt, Forde, Gray, Monson & Hagar, P.A., Minneapolis, Minnesota, for relators.

S Y L L A B U S

1. An employee's injury arises out of employment when there is a causal connection between the injury and the employment, including when an employee is exposed to a hazard that originates on the premises as part of the working environment.

2. An employee's injury was causally connected to her workplace, and thereby arose out of employment, when the employee, while carrying a plant from her desk and not using the handrails, fell down workplace stairs.

Affirmed.

O P I N I O N

MCKEIG, Justice.

This workers' compensation case concerns an employee who fell down a set of stairs on her employer's premises and was injured as a result. The facts related to how and why she fell are undisputed. Thus, this case presents the purely legal question of whether her injury "arose out of" her employment. In answering that question, the workers' compensation judge and the Workers' Compensation Court of Appeals (WCCA) took opposing views of the "increased-risk" test we applied in *Dykhoff v. Xcel Energy*, 840 N.W.2d 821 (Minn. 2013).

Because we agree with the WCCA that Roller-Dick's injury arose out of employment under the increased-risk test, we affirm.

FACTS

Respondent Laurie Roller-Dick is an employee of Relator CentraCare Health System. One day, as she was leaving work, Roller-Dick fell down a set of stairs, fracturing her left ankle as a result.

Roller-Dick accessed the stairway from the second-floor administrative area where she worked. The stairs are not usually accessible to the general public. The stairway has railings on both sides as well as nonslip treads on the steps. Immediately before Roller-

Dick fell, she was not using the handrails. She was holding a plant from her desk in both hands and her handbag was hanging from the crook of her elbow. As she was falling, she dropped her plant and caught herself on the handrail, resulting in the ankle injury.

Before the workers' compensation judge, Roller-Dick testified that the rubber sole of her shoe "stuck" to the treads of the stairs. But the workers' compensation judge found that "the non-skid surface of the stairs [neither] contributed to [nor] increased the risk of her fall." Further, the compensation judge found that the stairs were "a reasonable and consistent height" and that they were "free of debris, moisture, and defects" at the time of Roller-Dick's fall.

The only issue before the compensation judge was whether Roller-Dick's injury "arose out of" her employment. Relying on *Dykhoff v. Xcel Energy*, 840 N.W.2d 821 (Minn. 2013), and *Kirchner v. County of Anoka*, 339 N.W.2d 908 (Minn. 1983), the compensation judge held that the injury did not arise out of employment because Roller-Dick failed to establish that the stairs were "more hazardous than stairs she might encounter in everyday life or that her work duties in some way increased her risk of falling as she descended them." The compensation judge commented that it was "undoubtedly true" that the fact that Roller-Dick was not holding onto the handrails increased her risk of falling. But because Roller-Dick could not identify a "work-related reason" why she was not using the handrails, the compensation judge rejected the argument that her injury arose out of her employment on the basis of that fact.

The WCCA reversed. The WCCA determined that the compensation judge applied the incorrect test by requiring the employee to demonstrate some defect or additional

hazard on the stairs. *Roller-Dick v. CentraCare Health Sys. & SFM Mut. Co*, No. WC17-6057, 2017 WL 5504738, at *2 (Minn. WCCA Oct. 19, 2017). The correct test, the WCCA said, is whether the stairs posed an "increased" as opposed to a "neutral" risk. *Id.* at *3. The WCCA determined that stairs in the workplace are inherently hazardous, and thus they are not a "neutral condition" like the floor at issue in *Dykhoff*. *Id.* Because the stairs alone increased Roller-Dick's risk of injury, the WCCA held that her injury arose out of her employment. *Id.*

Relators sought certiorari review.

ANALYSIS

Under our workers' compensation system, employees give up their rights "to sue for damages over and above medical and health care benefits and wage loss benefits" and employers, in return, give up "rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others." Minn. Stat. § 176.001 (2016); *see also Breimhorst v. Beckman*, 35 N.W.2d 719, 732 (Minn. 1949) ("The law contemplates a reciprocal yielding and giving up of rights existing at common law for the new and enlarged rights and remedies given by the compensation act."). Thus, employers are "liable for compensation . . . in every case of personal injury or death of an employee *arising out of* and *in the course of employment* without regard to the question of negligence." Minn. Stat. § 176.021, subd. 1 (2016) (emphasis added).

The "in the course of" and "arising out of" requirements are distinct. *Dykhoff*, 840 N.W.2d at 826. The " 'in the course of' requirement 'refers to the time, place, and circumstances of the incident causing the injury.' " *Id.* (quoting *Gibberd v. Control Data*

Corp., 424 N.W.2d 776, 780 (Minn. 1988)). It is undisputed that Roller-Dick's injury occurred in the course of her employment. Thus, the only issue before us is whether Roller-Dick's injury arose out of her employment. In cases involving undisputed facts,[1] the question of whether an injury arises out of employment is a question of law that we review de novo. *Hohlt v. Univ. of Minn.*, 897 N.W.2d 777, 780 (Minn. 2017).[2]

I.

For an injury to "arise out of employment," there must be some "causal connection" between the injury and the employment. *Dykhoff*, 840 N.W.2d at 826. "This causal connection 'is supplied if the employment exposes the employee to a hazard which originates on the premises as a part of the working environment, or . . . peculiarly exposes the employee to an external hazard whereby he is subjected to a different and greater risk

---

[1] Because Roller-Dick does not pursue the argument that she fell, at least in part, because her shoe "stuck" to the non-slip treads on the stairs, the facts of this case are now undisputed.

[2] Relators argue that the WCCA exceeded the proper scope of review when it determined "issues and theories" not raised on appeal. Relators argue first that the only "issue" Roller-Dick raised on appeal was whether the compensation judge improperly applied a "negligence standard" and that the WCCA abused its discretion when it determined that the compensation judge applied the "incorrect test" to determine whether Roller-Dick's injury arose out of her employment. Second, Relators argue that the WCCA abused its discretion when it determined that Roller-Dick's injury arose out of her employment using a "theory of compensability" not raised by Roller-Dick before the compensation judge.

Neither of these arguments has merit. Roller-Dick's brief to the WCCA makes clear that she challenged the application of a legal requirement that the stairs be defective or more hazardous than normal for her injury to be compensable. In other words, she argued that the compensation judge applied the incorrect legal test. Further, because the WCCA determined that the compensation judge erred as a matter of law, it did not decide the case based on a new "theory of compensability."

than if he had been pursuing his ordinary personal affairs.' " *Id.* (quoting *Nelson v. City of St. Paul*, 81 N.W.2d 272, 275 (Minn. 1957)). Here, Roller-Dick has not argued that she faced an "external hazard" to which she was peculiarly exposed by her employment. Therefore, this case turns on whether she faced a hazard that originated on the premises as a part of the working environment.

In *Dykhoff*, we identified two categories of hazards from our previous cases. The first category involved "special hazards" created by employment. *Id.* at 826–27. These included obvious or easily understood risks such as "unsafe conditions" in an employer-owned parking ramp, *Foley v. Honeywell, Inc.*, 488 N.W.2d 268, 272 (Minn. 1992), an employee's required presence in a high crime area, *Hanson v. Robitschek–Schneider Co.*, 297 N.W. 19, 21 (Minn. 1941), and being struck by a ball on a playground in the case of an employee who was a teacher, *Nelson*, 81 N.W.2d at 275–76.

The second category involved hazards created by "neutral condition[s]" which are not "inherently dangerous or risky" but "something about [them] . . . increases the employee's exposure to injury." *Dykhoff*, 840 N.W.2d at 827. To illustrate the concept, we referred to *Kirchner v. County of Anoka*, which concerned an employee who was injured after falling down a set of stairs in the county courthouse where he worked. 339 N.W.2d at 910. The employee had to descend the stairs without using the handrail because "[p]ersons ascending the staircase occupied the only side with a handrail." *Id.* We held that, because the circumstances "required Kirchner to negotiate the steps without [the] benefit of [the only handrail,] . . . the requisite causal connection between the employment and the injury existed." *Id.* at 911. Thus, although the stairs were not obviously hazardous,

the employee encountered a set of circumstances—the need to descend the stairs, the absence of a second handrail, the presence of other persons on the stairs—that increased the employee's risk of injury.

Dykhoff was a "neutral condition" case. 840 N.W.2d at 827. The facts concerned an employee who inexplicably fell while walking on her employer's floor and was injured as a result. *Id.* at 824. Unlike in *Kirchner*, Dykhoff encountered no circumstances originating on the premises as part of the working environment that increased the employee's risk of injury—the floor was clean, dry, and flat. *Id.* at 827. In other words, there was no explanation for the employee's fall and resulting injury, and thus no causal connection existed between the employee's work environment and her injury. Accordingly, we held that the employee's injury did not arise out of her employment. *Id.* at 828.

We have called this inquiry the "increased-risk test." *Hohlt*, 897 N.W.2d at 781; *Kubis v. Cmty. Mem'l Hosp. Ass'n*, 897 N.W.2d 254, 259 (Minn. 2017). We have considered the test in two precedential decisions since *Dykhoff*—*Hohlt* and *Kubis*.[3]

Kubis concerned an employee who fell as she was ascending stairs on her employer's premises. 897 N.W.2d at 257. Before the compensation judge, the employee

---

[3] We also considered *Dykhoff* in two cases that resulted in non-precedential orders. In *Arrowhead Senior Living Community v. Kainz*, 860 N.W.2d 379, 380–81 (Minn. 2015), involving an employee who fell on stairs on her employer's premises, we summarily reversed and remanded the case to the compensation judge for consideration in light of *Dykhoff*. In *Crushshon v. New American Hospitality, Inc.*, No. A16-1522, Order at 1–2 (Minn. filed Oct. 25, 2017), we summarily affirmed the WCCA's decision that an employee's trip and fall on an irregular concrete surface on her employer's premises arose out of her employment.

asserted that she had been "rushing" to get up the stairs because she was concerned about clocking out in time. *Id.*at 258. Therefore, the primary issue before both the compensation judge and the WCCA was whether the employee rushing up the stairs—specifically because she had work-related concerns about the time—increased her risk of injury. *Id.* Because the compensation judge did not find her reasons for "rushing" to be credible, the judge determined that her injury did not arise out of employment and denied her claim. *Id.* The WCCA reversed, again focusing on the "rushing" aspect. *Id.* The WCCA concluded that the employee had two possible motives for hurrying, but the compensation judge had only considered one of them. *Id.* Because the WCCA determined that the employee's second motivation for rushing was supported by the evidence, it held that the injury arose out of employment. *Id.* at 258–59.

On appeal, we held that the WCCA exceeded the proper scope of review by substituting its own view of the "rushing" evidence for the findings of the compensation judge. *Id.* at 263. In so holding, we did not squarely decide the case based on the merits of the "arising out of" issue. In dicta, however, we suggested that the employee's injury could not have arisen out of employment absent some credible, employment-related reason for hurrying up the stairs. *Id.* at 261–62. We also discussed the absence of defects or other additionally hazardous conditions in *Kubis* that were present in previous stairway-fall cases. *Id.* at 261 n.5 (discussing *Kirchner*, 339 N.W.2d at 910–11, and *Kainz*, 860 N.W.2d at 380).

To summarize, *Kubis* was a case about the standard of review to which the WCCA must adhere when reviewing the findings of a compensation judge. The compensation

judge decided the case on narrow grounds—whether the employee's claimed reasons for her fall were credible. The compensation judge decided they were not. The WCCA superseded the compensation judge's role and made a credibility determination of its own. Thus, *Kubis* presented a factual dispute. By contrast, this is now a case of undisputed facts. Therefore, *Kubis* does not control here.

We decided *Hohlt* on the same day as *Kubis*. 897 N.W.2d at 777. *Hohlt* concerned an employee who was injured after she fell on an icy sidewalk owned and maintained by her employer, the University. 897 N.W.2d at 779. The University argued that, under *Dykhoff*, an employee must face a risk of injury beyond that which he or she would face in his or her everyday life for any resulting injury to arise out of employment. *Id.* at 783. Accordingly, the University argued that, because Hohlt faced a perfectly ordinary risk—icy Minnesota sidewalks—her injury could not have arisen out of employment. *Id.* We disagreed. *Id.*

We concluded that Hohlt's employment exposed her to a hazard—the icy sidewalk—that caused her injury. *Id.* at 781. Therefore, her injury arose out of her employment. *Id.* We expressed a concern that "sharpening the increased risk test" to require a risk other than those faced in daily life "would eliminate a broad swath of compensable injuries." *Id.* at 783. A contrary view, we said, would preclude hotel maids, landscape workers, delivery drivers, cooks, and employees in many other occupations from receiving compensation for work-related injuries. *Id.*

In so holding, we affirmed the core principles underlying our conclusion in *Dykhoff*: for an injury sustained on an employer's premises to arise out of employment, the employee

must have faced a hazard that originated on the premises as part of the working environment, thus supplying the requisite causal connection between the injury and employment. Such injuries are explained due to the employee's exposure to the hazard. Injuries caused by inexplicable slip-and-falls, as was at issue in *Dykhoff*, do not arise out of employment because employees in such cases have not faced a hazard which would explain the cause of their injury.

II.

Having established the rule of law that governs this case—that an injury arises out of employment when there is a causal connection between the injury and the employment—we must now apply that rule and decide whether there was a causal connection between Roller-Dick's injury on the stairway and her employment. The compensation judge found that there was nothing unusually dangerous about the stairs themselves—they were a reasonable and consistent height, and they were free of debris, moisture, and defects. The stairway was equipped with handrails on both sides. Roller-Dick regularly used the stairs to exit her workplace. Due to the circumstances on this particular day, Roller-Dick was not using the handrails as she was descending the stairs. She was carrying a plant from her desk that had been given to her by a coworker, as well as her handbag. These circumstances created an increased risk that Roller-Dick would fall and injure herself on the stairs, thus satisfying the requisite causal connection between the workplace and her injury.[4]

[4] The dissent asserts that we exceed the proper scope of review by substituting our

Furthermore, this case is on all fours with *Kirchner*, which we relied on in *Dykhoff* to distinguish between an explained and an unexplained injury. In *Kirchner*, the employee was faced with a hazard—stairs. 339 N.W.2d at 910. Due to the circumstances (other persons using the stairs), the employee was not holding onto the handrail at the time of his fall. *Id.* Due to the circumstances in this case (the fact that her hands were full), Roller-Dick was also not using the handrail.

In workers' compensation cases, we do not inquire into whether the circumstances that led to an employee's injury were attributable to either the employee or the employer. *See* Minn. Stat. § 176.021, subd. 1 ("Every employer is liable for compensation . . . in every case of personal injury or death of an employee arising out of and in the course of employment *without regard to the question of negligence*." (emphasis added)). We simply ask whether there was a causal connection between the injury and the workplace. When an employee faces a hazard originating on the premises as part of the working environment, the requisite causal connection is satisfied. *See Dykhoff*, 840 N.W.2d at 826.

The dissent's position that Roller-Dick's fall is not compensable because it was caused by what the dissent calls her "decision not to take advantage of the safety the handrails provided" smacks of a return to the negligence standard the Workers' Compensation Act expressly rejects. *See* Minn. Stat. § 176.021, subd. 1. If the dissent

---

judgment for that of the fact-finder. Yet the dissent notes that we "do[] not . . . make any contention that [the compensation judge's findings] are erroneous or without evidentiary support." The dissent's observation is accurate—the relevant facts here are not in dispute. We are thus faced with a question of law on which we must give the fact-finder no deference. *See Hohlt*, 897 N.W.2d at 780. It is the dissent that misapprehends the scope of review.

were correct, the employee in *Kirchner* should not have been compensated, because he chose not to wait to use the handrail, but went down the steps without using it. Yet we concluded that the injury satisfied the "requisite causal connection" to employment. *Kirchner*, 339 N.W.2d at 911.

Similarly, the dissent's insistence that the stairway "complied with all relevant safety standards" is legally irrelevant. An employer's obligation to maintain a clean and safe workplace is wholly distinct from the duty imposed on employers by workers' compensation law. That duty is to compensate employees for injuries arising out of and in the course of employment without regard to negligence on the part of the employee *or the employer*. Minn. Stat. § 176.021, subd. 1. We decline the dissent's theory to transplant negligence law into the "arising out of" requirement of workers' compensation law.[5]

Here, as the compensation judge said, it is "undoubtedly true" that Roller-Dick was exposed to circumstances in her workplace that increased her risk of falling. As a matter

[5] Moreover, we have expressly rejected any legal requirement that the circumstances in the workplace that cause an employee's injury be related to an employee's work duties. *Breimhorst*, 35 N.W.2d at 728 (stating that the primary question in workers' compensation cases is whether "employment is the predominant factor in peculiarly exposing the [employee] . . . to a hazard which may or may not be peculiar to or exclusively associated with the employment, and which hazard, though part of the general working environment, may be in direct consequence of an . . . event produced wholly within or *without* the orbit of work done for the employer by the claimant or others"). We only require a causal connection between the injury and the workplace, one that is satisfied if an employee faces hazardous conditions originating on the premises as part of the working environment. Accordingly, the compensation judge's conclusion that Roller-Dick's injury did not arise out of her employment because she could not identify any "work-related" reason for her fall is incorrect as a matter of law.

of law, those circumstances provided the causal connection between the injury and the workplace.[6] Therefore, we hold that the injury as a result of her fall arose out of her employment.

CONCLUSION

For the foregoing reasons, the decision of the Workers' Compensation Court of Appeals is affirmed.

Affirmed.

THISSEN, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

[6] We need not hold today, as the WCCA did, that stairs themselves are workplace hazards exposing employees to an increased risk of injury. Rather, we conclude that the now-undisputed factual circumstances surrounding Roller-Dick's injury—established in the record—amount to an increased risk as a matter of law. Whether stairs generally are hazardous is a matter for another case and another record.

D I S S E N T

GILDEA, Chief Justice (dissenting).

The question presented in this case is whether the injury to Roller-Dick is compensable under Minn. Stat. § 176.021 (2016). Section 176.021 provides that "[e]very employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence." Minn. Stat. § 176.021, subd. 1. The employee bears "[t]he burden of proof" to show that the injury "aris[es] out of and in the course of employment." *Id.* The statute defines "[p]ersonal injury" as an "injury arising out of and in the course of employment . . . while engaged in, on, or about the premises where the employee's services require the employee's presence as a part of that service at the time of the injury and during the hours of that service." Minn. Stat. § 176.011, subd. 16 (2016).

Interpreting section 176.021, we have consistently held that there are two distinct requirements for an injury to be compensable under the statute—the "arising out of" requirement and the "in the course of" requirement. *See e.g., Gibberd v. Control Data Corp.*, 424 N.W.2d 776, 780–84 (Minn. 1988) (holding that where an employee was assaulted while on a meal break on a public street by a person with no nexus to his employment, the employee's injury and death did not arise out of and in the course of his employment). The "arising out of" requirement "connote[s] a causal connection" and the "in the course of" requirement "refers to the time, place, and circumstances of the incident

causing the injury." *Id.* at 780; *see also Hanson v. Robitshek-Schneider Co.*, 297 N.W. 19, 21 (Minn. 1941).

There is no dispute here that Roller-Dick satisfies the "in the course of" requirement because her injury occurred within the time and space boundaries of her employment. The "arising out of" element, therefore, is the only element at issue in this case. Because Roller-Dick did not establish a causal connection between her injury and her employment, I conclude that she does not meet the "arising out of" element, and I therefore respectfully dissent.

The compensation judge reached the same conclusion that I reach on the "arising out of" requirement. The judge accurately cited our precedent, "recogniz[ing] the longstanding principle that '[t]he phrase "arising out of" means that there must be some connection between the injury and the employment.' " (quoting *Dykhoff v. Xcel Energy*, 840 N.W.2d 821, 826 (Minn. 2013)). The compensation judge then found that Roller-Dick did not meet her burden to prove the necessary connection. Specifically, the compensation judge found, "[t]he employee offered no evidence of a work-related reason she chose not to use the handrail."[1]

---

[1] The compensation judge noted that the employee offered three work-related reasons for her fall. First, the employee argued that because the stairs were not accessible to the general public but were accessible only to employees, the stairs necessarily presented an increased risk. The compensation judge rejected this argument because it was inconsistent with the law. Second, the employee argued that her descending the stairs without using the handrail increased her risk of falling. The compensation judge concluded that was "undoubtedly true," but that the employer was not responsible for this decision unless it was caused by a work-related reason, and the judge found that "the stairs in this case clearly had handrails and are in and of themselves no more risky than stairs in general." Third,

The majority reaches a different conclusion. According to the majority, the fact that the employee did not use the handrail and fell is enough to make the employer liable. But failing to require a connection to Roller-Dick's job effectively does away with the "arising out of" element in the statute.[2]

In other words, the fact that the employee fell on stairs at work establishes the "in the course of" element of the statute. *Gibberd*, 424 N.W.2d at 780 (noting that the "in the course of" requirement "refers to the time, place, and circumstances of the incident causing the injury"). But something more needs to be shown to prove the "arising out of" element—something other than that the injury happened at the work place. Otherwise, the statute does not have two independent requirements. *See State v. Nelson*, 842 N.W.2d 433, 440 (Minn. 2014) ("[T]he term 'and' ordinarily has a conjunctive meaning."); *Lennartson v. Anoka-Hennepin Indep. Sch. Dist. No. 11*, 662 N.W.2d 125, 130 (Minn. 2003) (concluding the plain meaning of "and" was conjunctive). Our obligation is to enforce both requirements in the statute. *See Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 292 (Minn. 2016) ("We also interpret statutes so as to give effect to each word and phrase.");

---

the employee argued that she fell because the "non-skid sole of her shoe 'stuck' on the non-skid surface of the stairs." The judge concluded that the employee did not prove by a preponderance of the evidence that this was the reason she fell. Important to this conclusion was the employee's testimony on cross examination that "the reason she fell 'could be' that she was carrying her plant and not holding onto the handrail."

[2] The rule the majority adopts also amounts to the adoption of the positional risk test, a test we specifically rejected in *Dykhoff*, 840 N.W.2d at 828–29 n.4 (discussing and rejecting positional risk test as inconsistent with Minn. Stat. § 176.021).

see also Minn. Stat. § 645.17(2) (2016) ("[T]he legislature intends the entire statute to be effective and certain.").

The majority attempts to solve the problem its analysis creates by holding that the stairway was a hazard. Because the stairway is a hazard and that hazard is at work, the majority concludes that Roller-Dick's employer is responsible for her injury. The majority's assertion that the stairway is a hazard is wrong as a matter of fact and as a matter of precedent.

In terms of the facts of this stairway, the compensation judge found that the stairs were not hazardous and complied with all relevant safety standards. Specifically, the compensation judge found that the stairs were "free of debris, moisture, and defects" and "in good repair, clean, and in compliance with OSHA requirements and applicable building codes." The stairway had two handrails and was sufficiently lit. Further, the compensation judge found that respondent did not prove that anything about the stairs contributed to her fall.

The majority does not—and could not—make any contention that these findings are erroneous or without evidentiary support. Moreover, none of these findings support a conclusion that the stairs are an inherent or increased hazard. Rather, the only conclusion to be drawn is that these stairs were not hazardous because the employer had addressed any potential safety issues that might have caused employees to be at an increased risk of injury. In reaching a contrary conclusion, the majority first asserts that the fact that the "stairway 'complied with all relevant safety standards' is legally irrelevant." But under the majority's own analysis there needs to be a hazard at the workplace in order for the employer to be

responsible. *See Hohlt v. Univ. of Minn.*, 897 N.W.2d 777, 779 (Minn. 2017) (noting that employer "has the responsibility to maintain [the public sidewalk], including keeping it clear of snow and ice."). When the stairway complies with all relevant safety standards, there is simply no room for the conclusion that the stairway is a hazard. The majority's conclusion to the contrary ignores the proper standard of review. *See Kubis v. Cmty. Mem'l Hosp. Ass'n*, 897 N.W.2d 254, 259–60 (Minn. 2017) ("[W]e 'will intrude only if, viewing the facts in the light most favorable to the findings, it appears that the findings are manifestly contrary to the evidence or that it is clear reasonable minds would adopt a contrary conclusion.' " (quoting *Hengemuhle v. Long Prairie Jaycees*, 358 N.W.2d 54, 61 (Minn. 1984)).[3]

[3] The WCCA likewise ran afoul of the proper standard of review when it concluded that stairs are hazards. The WCCA reached this conclusion without any consideration of the explicit factual findings the compensation judge made about the absence of supposed inherent hazards in stairways. When the WCCA clearly and manifestly errs in rejecting findings supported by substantial evidence—as it did in this case—we reverse. *Kubis*, 897 N.W.2d at 259. Clearly, to the extent the WCCA concluded that *this* set of stairs was a *hazard*, that conclusion is manifestly erroneous because it is contrary to the factual findings of the compensation judge and the WCCA must be reversed.

Apparently recognizing the error the WCCA made, the majority contends that is not really concluding that this stairway was a hazard. But the majority cannot have it both ways. The majority's only effort to satisfy the "arising out of" requirement in the statute is the conclusion that this stairway is a hazard. Indeed, the majority specifically acknowledges in footnote 5 that our precedent "require[s] a causal connection between the injury and the workplace, one that is satisfied if an employee faces hazardous conditions originating on the premises as part of the working environment." If the stairway is not a hazard, as the majority apparently argues in footnote 6, then the necessary "causal connection" is lacking and the WCCA must be reversed.

Apart from its departure from the proper standard of review, the majority's conclusion that the stairway is a hazard is also inconsistent with our "arising out of" precedent. We have never held that a stairway that complies with all relevant safety codes—as this one indisputably does—is a hazard. In fact, we said the opposite just five years ago in *Dykhoff*: "[m]any workplaces have stairways and there is nothing inherently dangerous or risky about requiring employees to use them." 840 N.W.2d at 827.[4]

Not only is the majority's conversion of the code-compliant stairway into a hazard inconsistent with *Dykhoff*, but it is also a marked departure from the types of conditions we have recognized to be hazards for purposes of the "arising out of" element of the statute. *See*, *e.g.*, *Hohlt*, 897 N.W.2d at 779–81 (recognizing that an icy sidewalk, which the employer was responsible for "keeping [] clear of snow and ice," was a hazard); *Nelson v. City of St. Paul*, 81 N.W.2d 272, 276 (Minn. 1957) (concluding that an injury arose out of employment because "the injury-producing hazard, the batting of a ball, . . . originated on the premises of the employer"); *Breimhorst v. Beckman*, 35 N.W.2d 719, 728 (Minn. 1949) (recognizing that a "spring gun" installed as part of an employer's "burglar-alarm device"

[4] Roller-Dick argues that this conclusion is dicta. I disagree. We reached this conclusion as part of our analysis of the employee's arguments in *Dykhoff*, arguments that required us to consider the applicability of the rule from *Kirchner v. County of Anoka*, 339 N.W.2d 908 (Minn. 1983). *See* 840 N.W.2d at 827 (discussing the employee's arguments and *Kirchner*). Moreover, even if the statement was truly dicta, the majority does not identify or explain why the statement is not entitled to at least persuasive weight. *See Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 277 n.9 (Minn. 2017) (noting the utility of applicable and persuasive dicta); *State v. Craig*, 826 N.W.2d 789, 793 (Minn. 2013) (declining to determine whether language was dicta but nonetheless electing to follow its analysis because it was "well-reasoned and persuasive authority"); *In re Bush's Estate*, 224 N.W.2d 489, 501 (Minn. 1974) ("Even dictum, if it contains an expression of the opinion of the court, is entitled to considerable weight.")

was a hazard); *Hanson v. Robitshek-Schneider Co.*, 297 N.W. 19, 21 (Minn. 1941) (concluding that an injury arose out of employment because the "employment exposed [the injured employee] to a different and greater hazard of injury from assault than if he had been pursuing ordinary personal affairs"). The majority articulates no principled basis for its departure from our precedent.

Based on the factual record and our precedent, I conclude the employer here provided a safe, non-hazardous stairway for its employees to use. Because Roller-Dick's decision not to take advantage of the safety the handrails provided is not attributable to her employer, I conclude that she does not satisfy the "arising out of" the employment element of Minn. Stat. § 176.021, subd. 1.[5]

Our decision in *Kirchner v. County of Anoka*, 339 N.W.2d 908 (Minn. 1983) confirms my conclusion. In *Kirchner*, the employee fell and was injured when his leg gave out on the stairway at his workplace and "there was no handrail available to protect him from falling." 339 N.W.2d at 910. The fact that the stairway had only one handrail was plainly attributable to the employer, and so the injury caused by the absence of a second handrail arose out of the employee's employment. *Id.* at 911. Any other reading of *Kirchner* leaves out the requirement that there be a causal connection between the

[5] By focusing on whether Roller-Dick's decision to use the stairway's handrail was work-related, the majority contends that I import a negligence standard into the workers compensation system. I disagree. I make no contention or suggestion that Roller-Dick was negligent. Moreover, the elements of a claim of negligence are not the focus or the effect of my examination. *See Gradjelick v. Hance*, 646 N.W.2d 225, 230 (Minn. 2002) (listing the four elements of a negligence claim). The focus for me is the one the statute requires: did the employee's injury arise out of her employment? It is for the Legislature, not our court, to change the statutory requirements.

employment and the injury—a requirement we specifically recognized in *Kirchner*. *Id.* ("The "arising out of' requirement refers to the causal connection between the employment and the injury.").

The majority argues that "we d[id] not inquire into whether the circumstances that lead to [the fall] were attributable to either the employee or the employer" in *Kirchner*. The majority is mistaken. We specifically concluded that the "requisite causal connection between the employment and the injury existed" in *Kirchner*. *Id.* We reached this conclusion because "the injury occurred when the public use of the only handrail required Kirchner to negotiate the steps without benefit of that protection." The choice, in other words, was not the employee's. Rather, the workplace made the choice for the employee in the sense that the employer chose to have only one handrail on the stairway, a stairway that both the public and employees had to use.

In this case, by contrast, the stairway had two handrails. That Roller-Dick did not have access to a handrail was not at all attributable to her employer. Instead, Roller-Dick chose, as the compensation judge found, not to use the handrails her employer provided because she was carrying personal items, a purse and a "personal plant." Nothing about Roller-Dick's employment dictated that choice.

In sum, because Roller-Dick did not meet her burden to show that her injury arose from her employment, I would reverse the WCCA and reinstate the judgment of the compensation judge.

ANDERSON, Justice (dissenting).

I join in the dissent of Chief Justice Gildea.