*158 Ill. App. 3d 81, *; 510 N.E.2d 908, **;*
*1987 Ill. App. LEXIS 2818, ***; 109 Ill. Dec. 840*

JAMES G. HOOD, Appellant, v. THE INDUSTRIAL COMMISSION et al. (Hood Construction Company, Appellee)

No. 5-86-0162WC

Appellate Court of Illinois, Fifth District, Industrial Commission Division

158 Ill. App. 3d 81; 510 N.E.2d 908; 1987 Ill. App. LEXIS 2818; 109 Ill. Dec. 840

March 16, 1987, Filed

SUBSEQUENT HISTORY: [*1]** Rehearing Denied July 29, 1987.

PRIOR HISTORY: Appeal from the Circuit Court of Randolph County; the Hon. Carl H. Becker, Judge, presiding.

DISPOSITION: Reversed and remanded with directions.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner employee challenged a judgment of the Circuit Court of Randolph County (Illinois), which confirmed the decision of respondent industrial commission, holding that the employee failed to prove that he sustained compensable accidental injuries.

OVERVIEW: The employee's father owned the company which employed him. When the employee traveled in his vehicle, which was paid for by the company, he was allowed to transport passengers but not to alter his route to pick them up. The company also owned an airplane. The employee sustained serious injuries as a result of a motor vehicle accident. The accident occurred while the employee was on a trip to fill nitrous oxide tanks for the airplane, after he stopped to pick up friends. An arbitrator awarded the employee temporary total disability. The commission held that the employee failed to prove that he sustained compensable accidental injuries, and the trial court affirmed the decision. The court reversed and remanded the action. Whether the employee's injury arose out of and in the course of his employment presented a question of law. If an employee's injury occurred while he was using employer-provided transportation which expanded his range of employment for the employer's benefit, his injury may be compensable. The employee was engaged in business travel at the time of the accident. His prior limited deviations from his assigned duties were

inconsequential, reasonable, and foreseeable.

OUTCOME: The court reversed the judgment and remanded the action.

CORE TERMS: estimate, route, nitrous oxide, pick, passenger, airplane, repair, compensable, travel, arbitrator, trip, injuries arose, undisputed, deviation, errand, drove, fill, tanks, drum, foreseeable, assigned, arbitrator awarded, total disability, accidental injuries, body shop, direct route, turbocharger, destinations, accommodate, confirmed

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

Workers' Compensation & SSDI > Compensability > Injuries > General Overview

HN1 If an employee's injury occurs while he is using employer-provided transportation which expanded his range of employment for the employer's benefit, his injury may be compensable. Compensable injuries also include those arising out of acts the employer either instructed the employee to perform or which are incident to the assigned duties reasonably expected to be performed by him. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: Edward J. Kionka, of Murphysboro, and Jerald J. Bonifield, of Belleville, for appellant.

James A. Thoenen, of Evans & Dixon, of St. Louis, Missouri, for appellee.

JUDGES: Justice Barry delivered the opinion of the court. McNamara, Woodward, McCullough, and Kasserman, JJ., concur.

OPINION BY: BARRY

OPINION

[*81] [909]** The petitioner, James G. Hood, filed a claim under the **Workers' Compensation** Act (the Act) (Ill. Rev. Stat. 1981, ch. 48, par. 138.1 *et* **[*82]** *seq.*) for injury he sustained while employed by the respondent, Hood Construction Company (the company). The arbitrator awarded the petitioner 55 2/7 weeks of temporary total disability. In reversing the decision of the arbitrator, the Commission found that the petitioner failed to prove that he sustained compensable accidental injuries on December 27, 1982. The circuit court of Randolph County confirmed the decision of the Commission. The petitioner brings the instant appeal.

The evidence at the arbitration hearing established **[***2]** the following. Ralph Hood, the petitioner's father, owned the company, which was located in rural Sparta. The company employed the petitioner to manage employees, pick up supplies, and run errands. The company furnished a 1982 Camaro (the vehicle) and paid for its gas and insurance. When the petitioner traveled in the vehicle, he was allowed to transport passengers but not to alter his route to pick them up. He recorded his destinations on his time card and was paid his customary hourly rate for his travel time.

The company also owned a racing airplane which Ralph and the petitioner had been constructing

for more than two years. Both the company and Hood Lumber Company bought the plane's parts and supplies. Hood anticipated that the completed airplane would advertise the company.

The weekend prior to December 27, 1982, Ralph instructed the petitioner to fill nitrous oxide tanks when he next went to St. Louis, so they could install a gas turbocharger in the airplane. On December 27, the petitioner checked the supply of step ties and worked on a roof until approximately 10 a.m., when he went to Quality Auto, a body shop in Red Bud, to obtain a repair estimate for the vehicle **[***3]** as Hood had requested. Fred Wood, the body shop owner, examined the vehicle but asked the petitioner to return later for a written estimate.

At approximately 1 p.m. the petitioner met his friend, Christine Sinn, in Marissa. They picked up Michael Schoenbeck and Anthony Shirk, two additional friends. All three passengers thought they were riding to Belleville. Instead, they proceeded directly to Midwest Four Wheel Drive in St. Louis, where the petitioner purchased the nitrous oxide and the passengers either waited in the vehicle or viewed "Bigfoot," a large truck. To accommodate Christine, the petitioner next drove to Fast Ed's, a music store, to pick up Christine's snare drum. As it was beyond lunch time, the parties made a brief stop at a nearby McDonald's, and then drove back toward Red Bud to obtain the repair estimate. From St. Louis the claimant traveled Route 3, the route which would take him to Red Bud, Marissa, or Sparta. **[*83]** While proceeding south on Route 3 at 4:43 p.m., the vehicle struck an automobile in the northbound lane.

Three months later the petitioner resumed consciousness. In January of 1985, he was confined to a wheelchair and was paralyzed on **[***4]** one side.

Arbitrator Clyde Boyd found that the petitioner's December 27, 1982, accidental injuries arose out of and in the course and scope of his employment with the company. The arbitrator found the following. On December 27, the petitioner was instructed to secure an estimate for the damaged vehicle which the company provided for the petitioner's business and personal use. He had previously been asked to refill the nitrous oxide containers for the company aircraft. After leaving a company jobsite, the petitioner drove to a repair shop to obtain the estimate. The petitioner then purchased the nitrous oxide and en route to obtain the written estimate stopped to pick up a passenger's drum. The arbitrator awarded the petitioner 55 2/7 weeks of temporary total disability for the petitioner's condition, which had not reached a permanent state.

No evidence was presented on review. In reversing the decision of the arbitrator, the Commission denied the petitioner's **[**910]** claim for failure to prove compensable accidental injuries on December 27, 1982. The circuit court of Randolph County confirmed the decision of the Commission. The petitioner appeals from that **[***5]** decision.

The petitioner argues that as a matter of law, the accident occurred in the course of his employment. The petitioner suggests that the undisputed facts indicate that his St. Louis trip to perform company errands was within the scope of his employment; his insignificant deviations were foreseeable; and, when the accident occurred, he was returning via a direct route to pick up the company's repair estimate.

The company responds that the Commission appropriately found that the petitioner's injury did not arise out of and in the course of his employment for the following reasons. Rather than performing an urgent company errand, the petitioner purchased nitrous oxide for the family airplane to camouflage the substantial employment deviation that occurred when he took his friends to view "Bigfoot" and to retrieve a drum at Fast Ed's. The presumption that the trip had a legitimate business purpose does not dispel the consequences of his substantial, unreasonable **detour** to Fast Ed's and McDonald's before **traveling** a different route to pick up the written estimate. Consequently, the petitioner never returned to his employment.

We find that the essential facts were undisputed. **[***6]** Whether **[*84]** the petitioner's injury arose out of and in the course of his employment, therefore, presents a question of law. (*Stevenson Olds Sales & Service v. Industrial Com.* (1986), 140 Ill. App. 3d 703, 489 N.E.2d 328.) Further, ***HN1*** if an employee's injury occurred while he was using employer-provided

transportation which expanded his range of employment for the employer's benefit, his injury may be compensable. (140 Ill. App. 3d 703, 489 N.E.2d 328.) Compensable injuries also include those arising out of acts the employer either instructed the employee to perform or which are incident to the assigned duties reasonably expected to be performed by him. *Hoffman v. Industrial Com.* (1984), 128 Ill. App. 3d 290, 470 N.E.2d 507.

It is undisputed that the company provided the vehicle and routinely paid the petitioner to travel his chosen routes to company destinations. The company bore the expenses of and allowed the petitioner to transport passengers on those trips. Hood and the petitioner had been building the company airplane for several years and next planned to install a gas turbocharger with a nitrous oxide component. The completed airplane would advertise the **[***7]** company.

Further, the record shows that prior to December 27, 1982, Hood instructed the petitioner to fill the nitrous oxide tanks on his next trip to St. Louis. The petitioner's December 27 workday began with a company job. Due to the inclement weather, he was told to obtain a repair estimate for the vehicle. The petitioner went to Quality Auto in Red Bud to obtain the estimate. After Wood inspected the vehicle's damage, he asked the petitioner to return later for the written estimate. The petitioner decided to use the time available to travel to St. Louis to fill the nitrous oxide tanks which were in the vehicle. Instead of driving directly to St. Louis, the petitioner slightly deviated to pick up three friends. Contrary to their belief that they were going to Belleville, the petitioner proceeded to purchase the nitrous oxide while his friends viewed "Bigfoot." To accommodate his passenger, the parties briefly stopped at Fast Ed's music store and then quickly stopped for lunch at a nearby McDonald's. The petitioner then took Route 3, a direct route toward Red Bud, Marissa, and Sparta, his business home, to pick up the repair estimate.

We find that the petitioner was engaged **[***8]** in business travel at the time of the accident. His prior limited deviations from his assigned duties were inconsequential, reasonable, and foreseeable, as the company rules prohibited the petitioner from neither transporting passengers nor choosing his own route. We further find that the petitioner's injury arose out of and in the **[**911]** course of his employment. The decision of the Industrial Commission is, therefore, contrary to the **[*85]** manifest weight of the evidence. (See *Robinson v. Industrial Com.* (1983), 96 Ill. 2d 87, 449 N.E.2d 106.) Consequently, the judgment of the circuit court of Randolph County is reversed and the cause is remanded to the Industrial Commission with directions to award **workers' compensation** in the appropriate amount.

Reversed and remanded, with directions.

*263 Ill. App. 3d 878, *; 636 N.E.2d 1088, **;*
*1994 Ill. App. LEXIS 975, ***; 201 Ill. Dec. 656*

STEMBRIDGE BUILDERS, INC., Appellant, v. THE INDUSTRIAL COMMISSION et al. (Mario Zepeda, Appellee).

No. 2-93-1181WC

APPELLATE COURT OF ILLINOIS, SECOND DISTRICT, INDUSTRIAL COMMISSION DIVISION

263 Ill. App. 3d 878; 636 N.E.2d 1088; 1994 Ill. App. LEXIS 975; 201 Ill. Dec. 656

June 23, 1994, Filed

SUBSEQUENT HISTORY: [*1]** Rehearing Denied August 1, 1994. Released for Publication August 1, 1994.

PRIOR HISTORY: Appeal from the Circuit Court of Kane County. No. 93-MR-150. Honorable Donald C. Hudson, Judge, Presiding.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant employer sought review of the judgment of the Circuit Court of Kane County (Illinois), which affirmed the award of benefits by respondent Industrial Commission to respondent employee for injuries that were sustained in an accident while completing an errand for the employer.

OVERVIEW: After the employee filed a claim for benefits for injuries that were sustained while returning from an errand for the employer, an arbitrator awarded benefits to the employee, which the commission affirmed. On review, the circuit court confirmed the findings of the commission, and the employer sought further review. On appeal, the employer contended that the employee's accident did not arise out of his employment, as a matter of law, because he was speeding in excess of 25 to 30 miles per hour over the posted limit when the accident occurred. The court found no evidence that the employee had left the scope of his employment. The court held that the accidental was incidental to employment because the employee was required to drive to complete the task assigned to him. The court held that, apart from the evidence of excessive speed, the surrounding circumstances did not

suggest that the conduct was wilful and wanton rather than merely negligent. The court ruled that, although there was evidence of negligent conduct by the employee, the commission did not err in determining that the employee as still within the scope of his employment when he was injured.

OUTCOME: The court affirmed the judgment of the circuit court confirming an award of benefits to the employee by the commission for injuries that were sustained while completing an errand for the employer.

CORE TERMS: claimant, miles per hour, driving, wilful, speed, wanton, matter of law, incidental, excessive speed, negligent conduct, performing, highway, speeding, errand, scope of employment, posted, standing alone, eyewitness, disqualify, traveling, assigned, zone, speed limit, arbitrator, distance, employer's business, unconnected, compensable, industrial, recklessly

LEXISNEXIS® HEADNOTES Hide

Workers' Compensation & SSDI > Compensability > Course of Employment > Causation

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

Workers' Compensation & SSDI > Compensability > Injuries > General Overview

HN1 An injury "arising out of" one's employment may be defined as one which has its origin in some risk so connected with, or incidental to, the employment as to create a causal connection between the employment and the injury. A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his duties. An injury is not compensable if it resulted in a risk personal to the employee rather than incidental to the employment. Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected to the work. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN2 When it is necessitated by the employment, the risks incidental thereto become the risks of the employment and remain so as long as the employee is acting in the course of his employer's business. More Like This Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Going & Coming Rule

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN3 Excessive speeding, standing alone, does not, as a matter of law, disqualify an employee from coverage under the applicable **compensation** law. More Like This Headnote | *Shepardize:* Restrict By Headnote

Torts > Negligence > Standards of Care > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Risks

HN4 Evidence of a defendant's servant driving too rapidly for existing road conditions is a circumstance which may be taken into consideration by the trier of fact as bearing upon the presence of wilful and wanton conduct. And, in a given case, speed itself might establish wilful and wanton conduct taking into consideration the degree of speed with reference to other surrounding facts and circumstances. Likewise, evidence of excessive speed also bears on the presence of negligent conduct. Thus, when speed is at issue, that which distinguishes wilful and wanton conduct from negligent conduct is the degree of speed. Where the speed is grossly fast for conditions, the conduct is wilful and wanton. Short of that, excessive speed constitutes negligent conduct. More Like This Headnote | *Shepardize:* Restrict By Headnote

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

HN5 The fact that an employee's conduct may be illegal is also of no moment to disqualify a claimant from recovery of benefits. More Like This Headnote

COUNSEL: For Stembridge Builders, Inc., Plaintiff-Appellant: Stevenson, Rusin & Friedman, Ltd., Attorneys at Law. John A. Maciorowski, Stevenson, Rusin & Friedman, Ltd., Chicago, IL.

For Illinois Industrial Commission, Defendant-Appellee: Industrial Commission of Illinois, Attn: Chairman's Office, Chicago, IL. For Mario Zepeda, Defendant-Appellee: Murphy, Hupp, Foote, Mielke & Kinnally, Attorneys at Law. APPEARANCE ENTER DATE: 01/20/94. Craig S. Mielke, Murphy, Hupp, Foote, Mielke & Kinnally, Aurora, IL.

JUDGES: McCULLOUGH, RAKOWSKI, WOODWARD, SLATER, RARICK

OPINION BY: McCULLOUGH

OPINION

[*878] [1089]** PRESIDING JUSTICE McCULLOUGH delivered the opinion of the court:

Claimant was severely injured in a one-car accident while completing an errand for his employer. An eyewitness testified claimant was **traveling** at approximately 65 to 70 miles per hour in a 40-miles-per-hour zone when he lost control of his vehicle and flipped **[***2] **[*879]** it over several times. The arbitrator and Industrial Commission (Commission) awarded benefits concluding claimant's negligence in speeding did not remove him from the scope of his employment. The circuit court confirmed the Commission. On appeal, respondent contends that claimant's accident did not arise out of his employment, as a matter of law, because he was speeding in excess of 25 to 30 miles per hour over the posted limit when the accident occurred.

Except for claimant's testimony concerning the moments immediately preceding the accident, the evidence is largely undisputed. Claimant, who was almost 17 years of age on the date of the accident, was employed on a part-time basis by a family friend, Harold Stembridge, to perform odd jobs for the respondent construction company which Stembridge owned. On April 7, 1992, claimant completed his chores at 6 p.m. and went to the Stembridge home where

Stembridge asked him to run an errand. The errand entailed driving to a nearby bank and cashing a personal check for Stembridge while depositing a business-related check. Claimant was permitted to drive Stembridge's 1991 Honda Accord.

Claimant drove the approximately 1 1/2 miles to the bank, **[***3]** made the transactions and began driving directly back toward the Stembridge residence. Claimant turned onto Montgomery Road heading west. At this point, the witnesses' stories diverge.

In claimant's estimation, he was driving between 50 to 60 miles per hour. Montgomery Road is a two-lane highway with a posted speed limit of 40 miles per hour. Claimant stated that a woman in another vehicle attempted to pass him in the left-hand lane. Claimant offered that he became frightened, slammed on the brakes, the car tipped over and he was thrown through the sunroof. He was familiar with the area, it was a clear day, and the road was straight, flat, and dry. Claimant also conceded that Stembridge did not tell him that he needed to hurry to complete the errand. Claimant had no further recollection of the accident.

Linda Dileo testified as the only other eyewitness. She was driving in the same direction as claimant. In her rearview mirror, she saw claimant turn onto Montgomery Road from a bank entrance. At that time, claimant was approximately 1,000 feet behind her. Dileo was driving at approximately 40 to 45 miles per hour and noticed claimant rapidly close the gap between his vehicle and hers.

[*4]** As claimant's car came up behind her, he swerved to pass her in the left-hand lane and lost control of the vehicle. Although there was a van in the distance coming toward Dileo and claimant, it was still a long way off and there was more than sufficient time and distance for claimant to successfully pass Dileo's car. Nevertheless, claimant's car began swerving as he passed her, and, approximately 500 feet ahead **[*880]** of her, claimant's car flipped over several times. Dileo estimated claimant's speed at 65 to 70 miles per hour.

Bradley Edwards, a police officer, investigated the accident. In his opinion, there was no condition of the roadway which caused the accident. Based on the witness report, Edwards believed that the accident was caused by claimant's driving in excess of the posted speed limit. Edwards had no opinion, however, as to whether driving at 65 to 70 miles per hour would increase the likelihood of an accident or losing control of a vehicle on a highway such as Montgomery Road.

In awarding benefits, the arbitrator chose to believe Dileo's version of the events. He concluded that claimant's excessive speed was the cause of the accident and that this conduct could be characterized **[***5]** as reckless. Nevertheless, because claimant was performing an act requested by the employer for the **[**1090]** benefit of the employer, claimant was still within the scope of his employment even though he was acting negligently or recklessly when the accident occurred.

The Commission affirmed the arbitrator noting that an employee's negligent conduct while performing a job task did not, as a matter of law, take the employee out of the scope of employment. The Commission found claimant's injuries arose out of and in the course of employment because at the time of the accident claimant was performing assigned work duties, albeit negligently.

Respondent argues that the act which caused the injuries was claimant's intentional, personal decision to "grossly" speed 25 to 30 miles per hour over the posted speed limit and this act was totally unconnected to the work or task to which he had been assigned by his employer. For that reason, respondent maintains, as a matter of law, the injury did not arise out of the employment. We disagree.

HN1 An injury "arising out of" one's employment may be defined as one which has its origin in some risk so connected with, or incidental to, the employment as to create **[***6]** a causal

connection between the employment and the injury. *(Greene v. Industrial Comm'n* (1981), 87 Ill. 2d 1, 4, 428 N.E.2d 476, 477, 56 Ill. Dec. 884.) A risk is incidental to the employment when it belongs to or is connected with what the employee has to do in fulfilling his duties. *(Fisher Body Division, General Motors Corp. v. Industrial Comm'n* (1968), 40 Ill. 2d 514, 516, 240 N.E.2d 694, 695.) An injury is not compensable if it resulted in a risk personal to the employee rather than incidental to the employment. *(Fisher Body Division,* 40 Ill. 2d at 517, 240 N.E.2d at 696.) Recklessly doing something persons are employed to do which is incidental to their work differs considerably from doing something totally unconnected **[*881]** to the work. *(Gerald D. Hines Interests v. Industrial Comm'n* (1989), 191 Ill. App. 3d 913, 917, 548 N.E.2d 342, 345, 138 Ill. Dec. 929.) It has long been recognized that one of the objectives of the **Workers' Compensation** Act (Act) (Ill. Rev. Stat. 1991, **[***7]** ch. 48, par. 138.1 *et seq.* (now 820 ILCS 305/1 *et seq.* (West 1992))) was to do away with the defenses of contributory negligence or assumed risk. *Hines,* 191 Ill. App. 3d at 917, 548 N.E.2d at 345.

The respondent argues that the risk was purely personal to claimant and was no different from that to which the general public was exposed and, for that reason, is not compensable. However, the supreme court long ago stated:

> "If the work of the employee creates the necessity for travel, he is in the course of his employment. Persons using the highway are subjected to certain traffic risks and one of the them is the danger of collision. The perils of modern-day travel upon the highways are well known. Risk of accident is an ever-present menace. ***HN2*** When it is necessitated by the employment the risks incidental thereto become the risks of the employment and remain so as long as the employee is acting in the course of his employer's business." *(Olson Drilling Co. v. Industrial Comm'n* (1944), 386 Ill. 402, 413, 54 N.E.2d 452, 457-58.)

Thus, because claimant was required to drive **[***8]** to complete the task assigned to him, the risk of accident was incidental to the employment.

The issue is whether speeding under the conditions which existed or which violates a statute constitutes a deviation which removes claimant from the scope of the employment. No Illinois cases are called to the court's attention. However, other jurisdictions have considered this issue. Professor Larson frames the analysis in the following manner:

> "The modern rule is that violation of a statute is not wilful misconduct *per se.* There must be the intentional doing of something of a quasi-criminal nature, either with knowledge that it is likely to result in serious injury, or with a wanton disregard of probable consequences." (1A A. Larson, Workmen's **Compensation** Law § 35.30, at 6-149 (1992).)

In applying this rule, it would appear the majority view is that ***HN3*** excessive speeding, standing alone, does not, as a matter of law, disqualify an employee from coverage under the applicable **compensation** law.

For example, in *White v. C.H. Lyne Foundry & Machine Co.* (Fla. 1954), 74 So. 2d 538, **[**1091]** there was some evidence decedent was **traveling** at 60 to 80 miles per hour when **[***9]** his automobile crashed although there were no eyewitnesses. The court found that the mere fact that **[*882]** one was shown to have been driving more than 60 miles per hour (which was prohibited by statute) was not sufficient, standing alone, to prove such a wilful violation of a speed law so as to preclude recovery. Likewise, in *Carey v. Bryan & Rollins* (1955), 49 Del. 387, 117 A.2d 240, **compensation** was awarded where claimant was shown to be driving 55 or 65 miles per hour in a 50-mile-per-hour zone when the accident occurred. A similar result obtained in *Bendett v. Mohican Co.* (1923), 98 Conn. 544, 120 A. 148, in which driving 40 miles per hour in a 20-mile-per-hour zone was held not to be wilful misconduct.

We believe the rule articulated by Professor Larson is consonant with the principles of tort law which apply generally in this State. HN4 Evidence of a defendant's servant driving too rapidly for existing road conditions is a circumstance which may be taken into consideration by the trier of fact as bearing upon the presence of wilful and wanton conduct. In *Porro v. P.T. Ferro Construction Co.* (1979), 72 Ill. App. 3d 377, 390 N.E.2d 958, 28 Ill. Dec. 599, **[***10]** the court stated:

> "And, in a given case, speed itself might establish wilful and wanton conduct taking into consideration the degree of speed with reference to other surrounding facts and circumstances. [Citation.] Likewise, evidence of excessive speed also bears on the presence of negligent conduct. [Citations.] Thus, when speed is at issue, that which distinguishes wilful and wanton conduct from negligent conduct is the degree of speed. Where the speed is grossly fast for conditions, the conduct is wilful and wanton. Short of that, excessive speed constitutes negligent conduct. Indeed, plaintiff concedes that the presence or absence of wilful and wanton conduct often 'boils down' to the degree of flagrancy of the offending conduct." *Porro,* 72 Ill. App. 3d at 380, 390 N.E.2d at 960.

In this case, apart from the evidence of excessive speed, the surrounding circumstances do not suggest that the conduct was wilful and wanton rather than merely negligent. It was a clear day, the sun was shining, the road was straight, flat and dry. Except for Dileo's car and a van off in the distance, there were no other vehicles on the **[***11]** roadway. Claimant was a young and inexperienced driver who was operating an almost brand new automobile. Although the investigating police officer testified that no defect in the highway contributed to the accident, he had no opinion as to whether driving at 65 to 70 miles per hour would increase the likelihood of an accident on this stretch of two-lane blacktop.

Likewise, there is no evidence claimant had left the scope of his employment. Claimant was returning directly to his employer's residence. **[*883]** He was not engaging in some **detour** to pursue other activities unrelated to the employment. There is no evidence that the speeding was occasioned by activities such as drag racing or an attempt to elude a police vehicle which might support an argument that claimant had left the scope of his employment.

All of the cases cited by respondent are distinguishable. In each, where **compensation** was denied, the supreme court determined that the employee was injured while performing a task solely for his personal benefit or was injured by something completely outside the workplace or employment environment, or the Commission's decision in this regard was not against the manifest weight of the evidence. **[***12]** See *Cunningham v. Industrial Comm'n* (1980), 78 Ill. 2d 256, 399 N.E.2d 1300, 35 Ill. Dec. 772 (supreme court would not overturn a Commission decision that employee was acting outside the scope of employment when, in anger, he slammed his hand into a door breaking a bone); *Segler v. Industrial Comm'n* (1980), 81 Ill. 2d 125, 406 N.E.2d 542, 40 Ill. Dec. 536 (employee performing a task for personal comfort when he was injured retrieving a frozen pot pie he intended to eat from an industrial oven); *General Steel Castings Corp. v. Industrial Comm'n* (1944), 388 Ill. 66, 57 N.E.2d 454 (employee denied benefits after being struck by a train while crossing railroad tracks at a point other than regular crossing after completion of the day's work); *Howell Tractor & Equipment Co. v. Industrial Comm'n* (1980), 78 Ill. 2d 567, 403 N.E.2d 215, 38 Ill. Dec. 127 (**traveling** salesman not within scope of employment **[**1092]** when struck by train at 2 a.m. after consuming five drinks and **[***13]** walking along tracks in a strange city without asking for directions or taxi service to his motel which was three miles from the point of the accident); *Brady v. Louis Ruffolo & Sons Construction Co.* (1991), 143 Ill. 2d 542, 578 N.E.2d 921, 161 Ill. Dec. 275 (benefits denied to employee injured at his work station when a truck crashed through the building wall).

The question of whether the conduct so deviated from the employer's business that it took the

employee out of the scope of employment is a question of fact. (*Paganelis v. Industrial Comm'n* (1989), 132 Ill. 2d 468, 483-84, 548 N.E.2d 1033, 1040, 139 Ill. Dec. 477.) The weight of authority is that excessive speed, standing alone, does not, *per se,* disqualify a claimant from recovery of benefits. HN5 The fact that the conduct may be illegal is also of no moment. (See *Paganelis,* 132 Ill. 2d at 485, 548 N.E.2d at 1041 (blood-alcohol level of .238 percent does not, as a matter of law, disqualify an employee driver from benefits).) As we stated in *Chadwick v. Industrial Comm'n* (1989), 179 Ill. App. 3d 715, 719, 534 N.E.2d 1000, 1002, 128 Ill. Dec. 555: **[***14]**

> "In this case, claimant was where he was supposed to be, doing what he was hired to do, albeit in an obviously negligent manner. **[*884]** That the risk was unreasonable is immaterial since the violation [of a work safety rule] occurred within the course of claimant's employment."

Although there was evidence of negligent conduct on the part of claimant, we cannot say, as a matter of law, that the Commission erred in determining that claimant was still within the scope of his employment when he was injured returning to the home of his employer after running a business-related errand.

For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

Affirmed.

RAKOWSKI, WOODWARD, SLATER, and RARICK, JJ., concur.

*308 Ill. App. 3d 278, *; 719 N.E.2d 792, **;*
*1999 Ill. App. LEXIS 743, ***; 241 Ill. Dec. 663*

JOHN BECKER, d/b/a Becker Brothers. Detasseling, Appellant, v. THE INDUSTRIAL COMMISSION et al. (Phyllis Jean Russell, as Mother and Friend of Randall S. Russell, Appellee).

No. 3-98-0889WC

APPELLATE COURT OF ILLINOIS, THIRD DISTRICT, INDUSTRIAL COMMISSION DIVISION

308 Ill. App. 3d 278; 719 N.E.2d 792; 1999 Ill. App. LEXIS 743; 241 Ill. Dec. 663

October 18, 1999, Decided
October 18, 1999, Opinion Filed

NOTICE: [*1]** PUBLISHED IN FULL

SUBSEQUENT HISTORY: Released for Publication November 23, 1999.

PRIOR HISTORY: Appeal from the Circuit Court of Henry County. Honorable Clarke C. Barnes, Judge Presiding.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant challenged the Circuit Court of Henry County (Illinois)'s confirmation of appellee's award to claimant for an adjustment of claim for **compensation** for injuries.

OVERVIEW: Appellant employer challenged the confirmation of appellee commission's award to claimant for an adjustment pursuant to the **Workers' Compensation** Act, 820 Ill. Comp. Stat. 305/1 (1998). Claimant sought **compensation** for injuries he incurred when he was hit by a car while crossing the road after appellant employer's bus dropped claimant off at home after work. On appeal, the court affirmed. Appellant alleged that the injury did not arise from employment. The injury did arise out of the employment since it was caused by some hazard to which claimant would have been equally exposed notwithstanding his employment. Since appellant provided claimant with transportation to and from work, appellant benefitted from providing transportation to claimant. This expanded claimant's employment. The court held that claimant's injuries arose out of and in the course of his employment.

OUTCOME: Confirmation of award affirmed. Where claimant was injured after employer's bus dropped him at home, injuries arose out of employment since they were caused by hazard that claimant would have been exposed to in spite of work.

CORE TERMS: bus, claimant's, highway, parking lot, injuries arose, transportation, course of employment, exposed, incidental, driveway, crossing, employer's premises, own benefit, general public, compensable, stepped, mailbox, arrival, struck, hazard, accidental injury, hazardous condition, detasseling, destination, obstructed, connected, sidewalk, crossed, front, exit

LEXISNEXIS® HEADNOTES Hide

Civil Procedure > Appeals > Standards of Review

Torts > Business Torts

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

HN1 The **Workers Compensation** Commission's determination of whether an injury arose out of and in the course of employment is a question of fact that will not be disturbed on review unless it is against the manifest weight of the evidence. The test is not whether this or any other tribunal might reach the opposite conclusion, but whether there was sufficient factual evidence in the record to support the commission's determination. More Like This Headnote

Torts > Business Torts

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Workers' Compensation & SSDI > Compensability > Course of Employment > Place & Time

HN2 "Arising out of" and "in the course of" employment are two separate and distinct elements. The latter element of "'in the course of" refers to the time, place and circumstances under which the accident occurred. "Arising out of," on the other hand, refers to the causal connection between the injury and the employment. More Like This Headnote

Torts > Business Torts

Workers' Compensation & SSDI > Compensability > Course of Employment > General Overview

Workers' Compensation & SSDI > Compensability > Injuries > Successive Injuries

HN3 Whether an injury arises out of the employment may be determined under two different approaches. First, an injury arises out of the employment where its origin stems from a risk connected with, or incidental to, the employment. A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling his duties. Second, an injury arises out of the employment where it is caused by some risk to which the employee is exposed to a greater degree than the general public by virtue of his employment. Under either approach, an injury does not arise out of the employment if it was caused by some hazard to which the employee would have been equally exposed notwithstanding his employment. More Like This Headnote | *Shepardize:* Restrict By Headnote

Labor & Employment Law > Employment Relationships > At-Will Employment > Employees

Torts > Business Torts

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

HN4 Generally, injuries incurred while **traveling** to or from the work place are not considered to arise out of and in the course of employment. The rationale underlying the rule is that the employee's trip to and from work is the result of the employee's decision about where to live, which is a matter of no concern to the employer. However, an exception to this rule exists where the employer expands the range of employment by providing the employee a means of transportation to and from work for the employer's own benefit. In such situations, the transportation is considered to expand the "in the course of" element while apparently providing a risk incidental to the exigencies of employment that satisfies the "arising out of" element. More Like This Headnote | *Shepardize:* Restrict By Headnote

COUNSEL: For John Becker, RELATED NAME: Becker Bros. Detasseling, Respondent-Appellant: Mr. Brad A. Elward, Heyl, Royster, Voelker & Allen, Peoria, IL, Ms. Karen L. Kendall, Heyl, Royster, Voelker & Allen, Peoria, IL, Mr. Bradford B. Ingram, Heyl, Royster, Voelker & Allen, Peoria, IL, Mr. Craig S. Young, Heyl, Royster, Voelker & Allen, Peoria, IL.

For Phyllis Jean Russell, RELATED NAME: Randall S. Russell, Petitioner-Appellee: Mr. Tym J. Kerr, Kewanee, IL.

JUDGES: Present - HONORABLE JOHN T. McCULLOUGH, Presiding Justice, HONORABLE THOMAS R. RAKOWAKI, Justice, HONORABLE, MICHAEL J. COLWELL, Justice, HONORABLE WILLIAM E. HOLDRIDGE, Justice, HONORABLE PHILIP J. RARICK, Justice. JUSTICE RAKOWSKI delivered the opinion of the court. McCULLOUGH, P.J., and COLWELL, HOLDRIDGE, and RARICK, JJ., concur.

OPINION BY: THOMAS R. RAKOWSKI

OPINION

[*280] [794]** JUSTICE RAKOWSKI delivered the opinion of the court:

Employer John Becker, d/b/a Becker Brothers Detasseling, customarily provided transportation for his employees for his own benefit. In this particular case, employer drove claimant's son Randall S. Russel home from work in a school bus. Instead of pulling onto Randall's driveway, the driver parked on the shoulder of the **[***2]** county highway across the road from the driveway. The bus' left tires remained on the road near the white line. Randall stepped off the bus, walked 5 to 10 feet to his mail box to get the newspaper, and then proceeded to cross the county highway when he was struck by a car coming around the bus. The issue is whether Randall's resulting injuries arose out of and in the course of his employment. Concluding that they do, we affirm the circuit court's confirmation of the Commission's award.

I. Facts

On July 17, 1995, Randall, a 15 year-old, began working for employer as a detasseler. [1] Employer testified that he employed high school students as well as older adults and that it was customary for him to provide transportation for his employees. Accordingly, at approximately 4 p.m., a yellow school bus rented by employer picked Randall up at his house. The bus took Randall to the jobsite, where he worked until approximately 7 p.m.

FOOTNOTES

1 A detasseler removes the tassels that bear the staminate flowers on the corn plant to prevent self-pollination. Webster's Third New International Dictionary 616, 2343 (1986).

[*3]** Kim Becker, another employee, drove Randall home in the school bus. Employer was also on the bus. Upon reaching Randall's residence, Kim positioned the bus on the paved shoulder across the road from the driveway. Kim testified that the left wheels were on the white line. However, Randall testified the bus was half on the shoulder and half on the roadway. Similarly, his father, Chuck Russell, who was also one of the police officers called to the accident scene, testified that almost half the bus encroached onto the roadway.

Randall exited the bus and walked 5 to 10 feet ahead of the bus where the mailbox was located. He retrieved a newspaper and then began to cross the street when a car coming around the bus struck him. Randall testified that, before exiting the bus, he asked for and received Kim's permission to go to his mailbox before crossing the street. Neither Kim nor employer could recall whether Randall made this request.

Randall, through Phyllis Jean Russell, as mother and friend, filed **[*281]** an application for adjustment of claim pursuant to the **Workers' Compensation** Act (Act) (820 ILCS 305/1 *et seq.* (West 1998)), seeking **compensation** for his injuries. **[***4]** The arbitrator awarded **compensation,** and the Commission affirmed. The circuit court confirmed the Commission's decision, and employer appeals. We have jurisdiction pursuant to Supreme Court Rule 301. 155 Ill. 2d R. 301.

II. Analysis

Employer contends that the injuries Randall suffered when he was hit by a car while crossing the highway did not arise out of or in the course of his employment. Specifically, employer contends that case law does not extend an employer's obligations for **workers' compensation** to cover situations where the employee has departed the employment premises, both in time and space.

HN1The Commission's determination of whether an injury arose out of and in the course of employment is a question of fact that will not be disturbed on review unless it is against the manifest weight of **[**795]** the evidence. *Flynn v. Industrial Comm'n,* 302 Ill. App. 3d 695, 701, 236 Ill. Dec. 363, 707 N.E.2d 208 (1998). "'The test is not whether this or any other tribunal might reach the opposite conclusion, but whether there was sufficient factual evidence in the record to support the Commission's determination.'" *Divittorio v. Industrial Comm'n,* 299 Ill. App. 3d 662, 671, 234 Ill. Dec. 6, 702 N.E.2d 172 (1998), **[***5]** quoting *Beattie v. Industrial Comm'n,* 276 Ill. App. 3d 446, 450, 212 Ill. Dec. 851, 657 N.E.2d 1196 (1995).

"Arising ***HN2***out of" and "in the course of" employment are two separate and distinct elements, The latter element of "'in the course of refers to the time, place and circumstances under which the accident occurred." *Caterpillar Tractor Co. v. Industrial Comm'n,* 129 Ill. 2d 52, 57, 133 Ill. Dec. 454, 541 N.E.2d 665 (1989); *Orsini v. Industrial Comm'n,* 117 Ill. 2d 38, 44, 109 Ill. Dec. 166, 509 N.E.2d 1005 (1987). "Arising out of," on the other hand, refers to the causal connection between the injury and the employment. See ***HN3*** *Caterpillar Tractor Co.,* 129 Ill. 2d at 58; *Orsini,* 117 Ill. 2d at 45. Whether an injury arises out of the employment may be determined under two different approaches.

First, an injury arises out of the employment where its origin stems from a risk connected with, or incidental to, the employment. *Caterpillar Tractor Co.,* 129 Ill. 2d at 58. "A risk is incidental to the employment where it belongs to or is connected with what an employee has to do in fulfilling **[***6]** his duties." *Caterpillar Tractor Co.,* 129 Ill. 2d at 58. Second, an injury arises out of the employment where it is caused by some risk to which the employee is exposed to a

greater degree than the general public by virtue of his employment. *Orsini,* 117 Ill. 2d at 45. Under either approach, an injury does not arise out of the employment if it was caused by some hazard to which the employee **[*282]** would have been equally exposed notwithstanding his employment. HN4 *Orsini,* 117 Ill. 2d at 45; *Hammel v. Industrial Comm'n,* 253 Ill. App. 3d 900, 902, 193 Ill. Dec. 201, 626 N.E.2d 234 (1993).

Generally, injuries incurred while **traveling** to or from the work place are not considered to arise out of and in the course of employment. *Commonwealth Edison Co. v. Industrial Comm'n,* 86 Ill. 2d 534, 537, 56 Ill. Dec. 846, 428 N.E.2d 165 (1981); *Hindle v. Dillbeck,* 68 Ill. 2d 309, 318, 12 Ill. Dec. 542, 370 N.E.2d 165 (1977); *Stevenson Olds Sales & Service v. Industrial Comm'n,* 140 Ill. App. 3d 703, 705, 95 Ill. Dec. 107, 489 N.E.2d 328 (1986). "The rationale underlying the rule is that the employee's **[***7]** trip to and from work is the result of the employee's decision about where to live, which is a matter of no concern to the employer." *Martinez v. Industrial Comm'n,* 242 Ill. App. 3d 981, 985, 183 Ill. Dec. 282, 611 N.E.2d 545 (1993). However, an exception to this rule exists where the employer expands the range of employment by providing the employee a means of transportation to and from work for the employer's own benefit. *Beattie v. Industrial Comm'n,* 276 Ill. App. 3d 446, 450, 212 Ill. Dec. 851, 657 N.E.2d 1196 (1995); *Stevenson Olds Sales & Service,* 140 Ill. App. 3d at 705. In such situations, the transportation is considered to expand the "in the course of" element while apparently providing a risk incidental to the exigencies of employment that satisfies the "arising out of" element. See *Sjostrom v. Sproule,* 33 Ill. 2d 40, 43-44, 210 N.E.2d 209 (1965).

The instant case presents elements falling within the above exception. Employer testified that he employed high school students as well as other adults in his detasseling operations. It was reasonable for the Commission to infer from this evidence **[**796]** that employer **[***8]** benefited from providing transportation in that he was able to employ persons not yet eligible to drive to the work place. As such, the Commission's decision that the transportation provided by employer expanded Randall's employment is supported by the evidence. See *Hindle,* 68 Ill. 2d at 320 (affirming Commission's decision that employer provided transportation for own benefit where some detasseling employees ranged in age from 14 to 16).

Employer contends, however, that the above exception does not support **compensation** here. Employer correctly observes that, unlike the typical case where the employee is injured while actually **traveling** between destinations, Randall was injured after he stepped off the bus at his home. See, *e.g., Commonwealth Edison Co.,* 86 Ill. 2d 534, 56 Ill. Dec. 846, 428 N.E.2d 165; *Hindle,* 68 Ill. 2d 309, 12 Ill. Dec. 542, 370 N.E.2d 165; *Sjostrom,* 33 Ill. 2d 40, 210 N.E.2d 209. Although employer's observation is correct, it does not preclude **compensation** in this case.

Instead of determining whether Randall remained within the course of employment after disembarking from the bus under the exception **[***9]** discussed above, we find analogous and apply the reasoning set forth in those cases where an employee is injured in an area near **[*283]** the employer's premises that is within the employer's control. The most common fact situation of this type is where the employee is injured in employer's parking lot or an immediate area surrounding the work place. See *Peel v. Industrial Comm'n,* 66 Ill. 2d 257, 260, 5 Ill. Dec. 861, 362 N.E.2d 332 (1977); *Hiram Walker & Sons, Inc. v. Industrial Comm'n,* 41 Ill. 2d 429, 431, 244 N.E.2d 179 (1968); *Chmelik v. Vana,* 31 Ill. 2d 272, 280, 201 N.E.2d 434 (1964); *Hammel,* 253 Ill. App. 3d at 903; *American Electric Cordsets v. Industrial Comm'n,* 198 Ill. App. 3d 87, 91, 144 Ill. Dec. 464, 555 N.E.2d 823 (1990). Although not every accidental injury sustained on the employer's premises is compensable, **compensation** is awarded under this line of cases where the claimant proves his injuries arose out of the hazards attendant to those locations and were sustained within a reasonable time before or after work. *Peel,* 66 Ill. 2d at 260; *Hiram Walker & Sons,* 41 Ill. 2d at 431; **[***10]** *Hammel,* 253 Ill. App. 3d at 903; *American Electric Cordsets,* 198 Ill. App. 3d at 91; see *Caterpillar Tractor Co.,* 129 Ill. 2d at 62 ("While the broad language of these cases might appear to imply that any accidental injury sustained on the employer's premises is compensable," "an examination of the cases indicates this court's continued adherence to the maxim that an injury is not compensable unless it is causally connected to the employment").

For instance, in *Hiram Walker & Sons,* our supreme court found injuries sustained in a parking lot arose out of and in the course of employment. There, the claimant slipped in employer's parking lot after sleet and snow had fallen the previous night. In finding compensability, the court observed:

> "'The parking lot was provided and used as an incident of the employment. The lot was used as an adjunct of the employer's plant, it was furnished and maintained by the employer to facilitate arrival and departure from work, and it was contemplated that employees would use the lot in going to and from their employment.'" *Hiram Walker & Sons,* 41 Ill. 2d at 430, quoting *Chmelik,* 31 Ill. 2d at 279. **[***11]**

In *Peel,* claimant was about to drive out of employer's parking lot immediately after work when he was stopped short by a co-employee's car blocking the only exit. In an attempt to push the car out of the exit with his co-employees, claimant slipped and struck his nose against the trunk causing him injury. In determining **[**797]** compensability, our supreme court reasoned that "since the accidental injury was sustained while Peel was assisting in the removal of the vehicle which was blocking the only usable entrance to the company's property, it plainly was incidental to his employment." *Peel,* 66 Ill. 2d at 260. As such, the court concluded that claimant's injuries arose out of and in the course of his employment. *Peel,* 66 Ill. 2d at 260.

[*284] Similarly, in *Deal v. Industrial Comm'n,* 65 Ill. 2d 234, 2 Ill. Dec. 374, 357 N.E.2d 541 (1976), our supreme court applied the same reasoning although the injury did not occur on the employer's premises. There, the employer's front door opened directly onto the sidewalk and provided, for all intents and purposes, the only exit from the premises. As the claimant was leaving the premises, he stepped **[***12]** onto the concrete apron joining the sidewalk to the front door's threshold and was struck by a bicyclist passing by. The employer argued that such a risk of injury is common to the general public and, therefore, the claimant's injuries were not compensable. The court disagreed, reasoning that the employees leaving the office were immediately exposed to the hazards of any type of traffic on the sidewalk and, as such, the Commission could reasonably conclude that claimant's injury arose out the employment as one that he was exposed to a greater degree than the general public.

The underlying reasoning in these cases supports a finding that Randall's injuries arose out of and in the course of his employment. As to the "arising out of" prong, Randall encountered a hazardous condition attendant to his employment just like the claimants in the above cases. Specifically, the record shows that the bus was parked across the highway from Randall's driveway and that the left wheels were either on the white line or farther toward the middle of the road. As such, Randall had to cross the highway to reach his home. Because Randall crossed the highway in front of the bus, one could easily infer that **[***13]** a hazardous condition for crossing the highway was created. Not only was Randall's view obstructed, but it can be inferred that the view of the driver that hit him was obstructed as well. As to the "in the course of" prong, clearly Randall was in the course of his employment up until he stepped off the bus as the bus ride home was provided for employer's own benefit and expanded Randall's employment. Further, under the above cases, Randall remained in the course of his employment for a reasonable time after leaving the bus since leaving the bus is analogous to and just as incidental as leaving a typical workplace.

Nevertheless, employer contends that Randall was not in the course of his employment because he took a personal deviation by retrieving a newspaper from his mailbox before crossing the street. We find this fact irrelevant.

In *Hiram Walker & Sons,* claimant fell and was injured in employer's parking lot before work. There was evidence, however, that the accident occurred while claimant was heading toward a cafe instead of proceeding directly to work. In finding his injuries were sustained in the course of his employment, the supreme court reasoned that "his presence in **[***14]** the lot was due

entirely to his employment." **[*285]** *Hiram Walker & Sons,* 41 Ill. 2d at 431. The existence of the risks did not depend upon whether he directly proceeded to work or went to breakfast first. Without evidence that the parking lot's condition would have been remedied between the time of the his arrival and the time he was suppose to begin work, the court believed that "neither the precise time of his arrival nor his immediate destination was relevant to the risk created by the condition of the parking lot." *Hiram Walker & Sons,* 41 Ill. 2d at 431.

The same is true here. That Randall crossed the highway with an obstructed view of traffic was due entirely to his **[**798]** employment. The employer could have dropped him off on his driveway or could have dropped him off and driven away. Under either of these scenarios, Randall would have been exposed to the same risks to which the general public is exposed. Nevertheless, the location of the bus coupled with Randall's decision as to where to cross the road created a hazardous situation, namely, crossing the highway without a clear, unobstructed view. That hazard existed even assuming Randall immediately crossed **[***15]** the highway after exiting the bus. Clearly, Randall's going to the mailbox, an act that could not have taken more than a minute according to the record, was not a deviation that could remove him from the course of his employment or vitiate the hazardous condition that was created. *Hiram Walker & Sons,* 41 Ill. 2d at 431 (precise time of claimant's arrival into employer's parking lot or destination was not relevant where "his presence in the lot was due entirely to his employment"). Moreover, there is some evidence in the record that employer acquiesced to Randall's **detour.** See *Miller v. Reynolds,* 200 Ill. App. 3d 166, 171-72, 146 Ill. Dec. 710, 558 N.E.2d 673 (1990) (course of employment may be expanded by employer's acquiescence to employee's activities or where the employee performs a task outside his regular duties to advance the employer's interests). As such, we find employer's contention unpersuasive; therefore, we still conclude that Randall's injuries arose out of and in the course of his employment.

III. Conclusion

For the reasons discussed above, the we affirm the trial court's confirmation of the Commission's decision.

Affirmed.

McCULLOUGH, **[***16]** P.J., and COLWELL, HOLDRIDGE, and RARICK, JJ., concur.

*99 IIC 918; 1999 Ill. Wrk. Comp. LEXIS 366, **

RONALD LEET, PETITIONER, v. CONSOLIDATED HIGH SCHOOL DISTRICT 230, RESPONDENT.

No. 98WC 60354

INDUSTRIAL COMMISSION OF ILLINOIS

STATE OF ILLINOIS, COUNTY OF COOK

99 IIC 918; 1999 Ill. Wrk. Comp. LEXIS 366

October 8, 1999

CORE TERMS: arbitrator, engineer's, route, plat, temporary, plat of survey, surgical, drove, miles, sick, permanent disability, total compensation, notice, total incapacity, written request, first aid, terminated, traffic, contest, strain, temporary total disability, Illinois Workers' Compensation Act, high school, petitioner testified, court reporter, accident site, high schools, money order, light duty, rush hour

JUDGES: Michael L. Weaver; Richard Gilgis; Jacqueline A. Kinnaman

OPINION:

[*1] DECISION AND OPINION ON REVIEW

Timely Petition for Review under § 19(b)1 having been filed by the Respondent herein and notices given to all parties, the Commission, after considering the issues) of accident casual connection temporary total disability, medical expenses, & 8(j) credit and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

The Commission vacates the Arbitrator's reference that Respondent shall hold the Petitioner harmless for necessary first aid, medical surgical and hospital services already accurred as provided in § 8(a) of the Act. The issue of credit under § 8(j)2 is reserved for the Arbitrator upon remand.

IT IS THEREFORE ORDERED BY THE COMMISSION **[*2]** that Respondent shall pay to the Petitioner the sum of $ 843-4/7 per week for a period of 19-4/7 weeks, that being the period of temporary total incapacity for work under § 8(b), and that as provided in § 19(b) of the Act, this award in no instance shall be a bar to a further hearing and determination of a further amount of temporary total compensation or of compensation for permanent disability, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, **[*3]** payable to the Industrial Commission of Illinois in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

ATTACHMENT:

NOTICE OF 19(b-1) DECISION OF ARBITRATOR

Ronald Leet, Petitioner, vs. Consolidated High School District 230, Respondent.

CASE NO. 98 WC 60354 Corrected

Take notice that on June 4 1999, there was filed with the Industrial Commission, at Chicago, Illinois, the Decision of the Arbitrator in the above entitled matter, a copy of which Decision is enclosed to you herewith.

[EDITOR'S NOTE: TEXT WITHIN THESE SYMBOLS [O> <O] IS OVERSTRUCK IN THE SOURCE.]

You are further notified that unless a Petition for Review is filed, together with a certification that payment for the cost of the transcript of proceedings on arbitration in the estimated/[O> final <O] amount of $ 293.40 has been made to the court reporter and a copy of the check(s) or money order(s) submitted to the court reporter, with the Industrial Commission within thirty (30) days after receipt of this decision, and a Review perfected in accordance with the Workers' Compensation Act and the Rules of the Industrial Commission, then the Decision of the **[*4]** Arbitrator shall be entered as the decision of the Industrial Commission. Subject to Section 19 (n) of the Illinois Workers' Compensation Act, the interest rate for purposes of an appeal in this case is 4.75%. However, should an Employee's appeal of this case result in either no change or a decrease in this award, interest shall not further accrue from the date of such appeal.

DECISION MAILED TO:

98 WC 60354

(1455) arb19b-1

BOZICH, BRICE M

11800 S 75TH AVE*

PALOS HEIGHTS IL 60463

98 WC 60354

(0210) arb19b-1

GANAN & SHAPIRO

210 W ILLINOIS*

CHICAGO IL 60610

DISPUTED CLAIM

COUNTY OF COOK

RONALD LEET Petitioner, vs. CONSOLIDATED HIGH SCHOOL DISTRICT 230 Respondent.

___ Specific Loss with TT
___ Specific Loss without TT
___ 19(b)
[checkmark] 19(b) with Medical
___ 19(b) with Rehabilitation
___ Death
___ Permanent Total
___ Compensation Denied
___ DWP
___ Occupational Disease
CLAIM # 98 WC 60354

CORRECTED

MEMORANDUM OF DECISION OF ARBITRATOR

An application for adjustment of claim was filed in this matter and notice of hearing mailed to each party. The matter was heard by an Arbitrator designated by the Commission in the City of Chicago, said County and State, on February **[*5]** 25 and March 23, 1999. After hearing the proofs and allegations of the parties and having made careful inquiry in this matter the arbitrator concludes:

On November 6, 1998, the Respondent Consolidated High School District 230, was operating under and subject to the provisions of the Illinois Workers' Compensation Act; and on this date the relationship of employee and employer existed between the Petitioner Ronald Leet, and said Respondent; on the above mentioned date the Petitioner sustained accidental injuries which arose out of and in the course of the employment by the Respondent; timely notice of this accident was given the Respondent.

The earnings of the Petitioner during the year next preceding the injury were $ 79,543.88 and that the average weekly wage was $ 1,529.69.

Petitioner at time of injury was 41 years of age, married, and had one child under 18 years of age.

Necessary first aid, medical, surgical and hospital services have not been provided by the Respondent herein.

Petitioner is entitled to have and receive from said Respondent the sum of $ 843.47 per week for a period of 19 4/7 weeks, that being the period of temporary total incapacity for work, for which compensation **[*6]** is payable.

The sum of $ 1,798.82 has been paid on account of this injury.

The Arbitrator renders findings on the following disputed issues:

(D) Whether an accident occurred which arose out of and in the course of Petitioner's employment by Respondent;

(I) Reasonableness or necessity of medical, surgical or hospital bills or service;
(J) Amount of compensation due for temporary total disability;
(L) Whether penalties should be imposed upon Respondent;
(M) Amount of credit due Respondent;
(N) Whether Petitioner's present condition of ill-being is causally related to the injury;

In support of the Arbitrator's decision relating to ___ the Arbitrator finds the following facts:

___

In support of the Arbitrator's decision relating to ___ the Arbitrator finds the following facts:

___

Petitioner is entitled to have and receive from Respondent the sum of $ 843.47 per week for a period of 19 4/7 weeks to date of 3.23.99 that being the period of temporary total incapacity for work under Section 8(b), for which compensation is payable and that as provided in, Section 19(b-1) of the Act.

This award in no instance shall be a bar to a further hearing and determination of a further amount of temporary **[*7]** total compensation or of compensation for permanent disability.

___

In support of the Arbitrator's decision relating to ___ the Arbitrator finds the following facts:

___

Petitioner is now entitled to receive from the Respondent compensation that has accrued from 11.6, 1998 through 3.23, 1999, and the remainder, if any, of the award to be paid to Petitioner by Respondent in weekly payments. Respondent shall hold the [ILLEGIBLE WORD] heam less for necessary first aid, medical, surgical and hospital services, already [ILLEGIBLE WORD] as provided in paragraph (a) of Section 8.

DATED AND ENTERED 6. 1, 1999

[ILLEGIBLE WORDS]

ARBITRATOR

UNCONTESTED FINDINGS OF FACT:

The petitioner, a 41 year old Physical Plant Manager, worked for the Respondent for nearly eight years.

On November 6, 1998, the petitioner was involved in an automobile collision while allegedly

enroute to deliver a "plat of survey" (Resp. Exh. 4a and 4b) to Schudt and Associates, an engineering group. The Respondent does not contest the facts of the auto accident, namely, that another vehicle, a Chevy Blazer, ran a stop sign and hit the petitioner's vehicle at a high rate of speed. The hospital records (Pet. Exh. # 5) corroborate **[*8]** the petitioner's testimony regarding his injuries. They included the following: mild traumatic brain injury; post-concussion syndrome; left shoulder rotator cuff strain; right thumb collateral ligamenet strain; lateral left 7th rib fracture with accompanying costal chondral margin strain of the 7th and 8th rib on the left.

WITH REGARD TO ISSUE (D) WHETHER AN ACCIDENT OCCURRED IN THE COURSE OF THE PETITIONER'S EMPLOYMENT:

The thrust of Respondent's defense is that the accident did not occur in the course of his employment because the petitioner went on a "**frolic and detour**". It bases its defense on the lengthy circuitous route the petitioner under took to go from his office, then to one of the high schools, and then to the engineer's office, on a Friday afternoon, in order to deliver a plat of survey. (See map, Resp. Exh. 1.)

The petitioner testified, and a co-employee corroborated the fact that one of the reasons the petitioner had the plat was so that he could make "handwritten changes" to the plat. This would enable the engineers to know what changes had been made to the physical make up of the high school which included the track and the stadium seats. They could then take **[*9]** those changes into account when they were drawing the revised plans. The co-employee, Mr. Robert Hughes, also testified to what changes Mr. Leet, the petitioner, made to the plat, and what changes he made to the plat. He further testified that there was a rush to get the plat of survey to the engineer's office so he went to the petitioner's house after the accident, picked up the plats, and delivered them.

The petitioner testified he was going to finish the plat of survey at Stagg High School so he headed in a northerly direction. It was unclear why he headed to the school-he either had a large work surface there where he could make changes to the plats, or he needed to refresh his recollection as to what changes had been made at the school which he would need to document on the drawings. He was driving the vehicle provided by the School District. He had been assigned the vehicle because there was frequent commuting between the two high schools and the administrative offices. At or about 3:30 P.M., he left the administrative offices where he mentioned to his secretary, Audrey, that he was delivering the plat to the engineers. This statement was never rebutted by the Respondent. While **[*10]** en route to the school he encountered heavy traffic so he decided against stopping at the high school, and drove "directly" to the engineers' office. He assumed the engineers' office closed at 4:30 so he was in a bit of a rush. He drove east, then south, to avoid heavy traffic and various construction sites on the road. He was less than ten minutes away from the engineer's office when the accident occurred at Flossmoor and Central.

The Respondent produced Mr. Willie A Larks, a private investigator as one of its witnesses. He acknowledged putting all the "stickies" on Resp. Exh. 1, and he stated he incorrectly "laid out" the petitioner's route based on the misinformation he had been supplied with by the insurance company. However, he did testify that the route the petitioner took totalled nearly 22 miles: 17.9 miles to the accident site and 4.1 miles from the accident site to the engineer's office. If the petitioner had taken a more direct route from the administrative offices to the engineers' office, the total mileage would have been substantially less, 8.9 or 6.3 miles, depending on which route one took. On cross-examination Mr. Larks admitted he drove these routes on the 11th **[*11]** and 15th of March, 1999, although he later recanted the 11th because he said he drove the route on a Friday. The 1999 calendar reveals that the 11th of March was a Thursday and not a Friday. He also admitted he was not familiar with the construction which was going on in that neighborhood, and that he was not familiar with all of the alternative streets, nor was he familiar with certain street barriers.

Although the arbitrator finds Mr. Larks to be a highly credible witness, the majority of his testimony dealt with theoretical probabilities and was therefore not relevent to the issue in question. What was the most expeditious route, during rush hour on a Friday afternoon, from Stagg High School to the engineer's office, in November of 1998? The petitioner, based on his years of driving in that community, chose what he thought was the most expeditious route given his time restraints. The arbitrator is not familiar with the streets and traffic patterns of that community and is therefore not going to "second guess" his decision. The arbitrator is aware of the fact that during the rush hour in Chicago, it is usually faster to take Roosevelt or Grand Avenues to get to the western suburbs **[*12]** than it is taking the Congress "Expressway". The respondent failed to introduce any other susbstantive evidence which would refute the petitioner's testimony that he deviated from his appointed rounds. The arbitrator therefore finds the petitioner sustained an accident which occurred in the scope of his employment as a **traveling** employee. The Respondent did not contest the petitioner's assertion that delivering the plat of survey was part of his job duties, so it did not contest the fact that the injury arose out of the employment situation.

IN SUPPORT OF HIS DECISION RELATING TO (L) PENALTIES, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The Arbitrator finds the Respondent presented a twisted but "good faith" defense and therefore finds penalties are not warranted. The arbitrator would have awarded penalties if the Respondent had not continued to pay "some" benefits to the Petitioner after he was terminated.

IN SUPPORT OF HIS DECISION RELATING TO (N) CAUSAL CONNECTION, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The arbitrator having already found that the petitioner sustained an accident which arose out of and in the course of his employment, and the respondent having failed **[*13]** to offer any evidence that the petitioner's injuries were the result of anything but the automobile accident, the arbitrator finds that the petitioner has established a causal relationship between the accident and the injuries.

IN SUPPORT OF HIS DECISION RELATING TO (M) THE AMOUNT OF CREDIT DUE TO THE RESPONDENT, THE ARBITRATOR FINDS THE FOLLOWING FACTS:

The petitioner was terminated by the Respondent on January 26, 1999. The Respondent's witness, Ms. Virginia Taraba, a payroll clerk, testified that she was instructed to use up all of the petitioner's sick pay to compensate him while he was off from work--for a total of 70 5/8 days. The witness further testified that if an employee is terminated or leaves voluntarily, he or she automatically loses all of their sick time.

The witness next testified that she began using the petitioner's vacation time to compensate him when his sick benefits ran out.

The Respondent next contends that the Petitioner was released to light duty work on Jan. 4, 1999, and that the Respondent wanted to accommodate his light duty restrictions. The arbitrator does not find this argument to be credible or persuasive. It appears the Respondent really wanted **[*14]** the Petitioner back so that they could terminate him. The arbitrator finds it would have been near- suicidal for the petitioner to attempt to return to work with his closed-head injury, and his current multitude of physical complaints at such an early date.

The arbitrator finds that the respondent is entitled to credit for the sickin pay they voluntarily gave the petitioner. Further, the Respondent is not entitled to any credit for any vacation pay they forced the petitioner to use. The parties failed to address the issue of how much the sick pay was actually worth. The witness stated it was "equal to his salary" but did not state whether deductions were taken out. Notwithstanding the foregoing, the arbitrator therefore finds the Respondent is entitled to a credit of $ 1,798.82 (i.e. $ 25.47 @ hr. x 70 5/8 hr.s).

IN SUPPORT OF HIS DECISION RELATING TO (I) THE REASONABLENESS OR NECESSITY OF MEDICAL SERVICES THE ARBITRATOR FINDS THE FOLLOWING:

The petitioner outlined five medical providers on the stipulation sheet who appeared to have been paid by the petitioner's group medical provider, which is why the petitioner did not introduce any medical bills for reimbursement. The arbitrator **[*15]** finds that the Respondent will hold the petitioner harmless in the event any of the providers chose to seek reimbursement from the petitioner.

Legal Topics:

For related research and practice materials, see the following legal topics:
Workers' Compensation & SSDI > Administrative Proceedings > Alternative Dispute Resolution

Workers' Compensation & SSDI > Compensability > Course of Employment > Business Travelers

Workers' Compensation & SSDI > Compensability > Course of Employment > Horseplay

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
Terms: **traveling and detour and frolic** (Edit Search | Suggest Terms for My Search)
View: Full
Date/Time: Friday, January 21, 2011 - 10:46 AM EST

In

*9 IWCC 117; 2009 Ill. Wrk. Comp. LEXIS 180, **

JASON CONLEY, PETITIONER, v. GENE MAY, INC., RESPONDENT.

NO: 03WC 19185

ILLINOIS WORKERS' COMPENSATION COMMISSION

STATE OF ILLINOIS, COUNTY OF DUPAGE

9 IWCC 117; 2009 Ill. Wrk. Comp. LEXIS 180

February 4, 2009

CORE TERMS: arbitrator, truck, collision, job site, lunch, temporary total disability, average weekly wage, condenser, driving, zone, traveling, fracture, dump truck, speed, mile, lane, accidental injury, laceration, permanent, ill-being, fixation, earnings, pick, speed limit, work site, performing, detour, map, accident report, year preceding

JUDGES: Molly C. Mason; Paul W. Rink

OPINION: [*1]

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issue(s) of accident, causal connection, temporary total disability, permanent disability, medical expenses and hold harmless order, and being advised of the facts and law, modifies the Decision of the Arbitrator as stated below and otherwise affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof

After considering the entire record, the Commission corrects two aspects of the Decision of the Arbitrator and modifies the Arbitrator's average weekly wage finding.

The Decision reflects that "a police accident report introduced into evidence reflects that Petitioner was in a hurry to get back to the job site and was lost". The Commission has reviewed all of the police reports in evidence and has found no report indicating that Petitioner was hurrying or lost. While it is unusual to find such reports in a Commission transcript, it can be presumed that they were offered and admitted in this case because Petitioner testified that

he had no recollection of the events preceding **[*2]** the collision of June 19, 2001.

Respondent does not dispute the following: 1) Petitioner was operating a company vehicle at the time of the collision; 2) Petitioner's foreman, Todd May, directed Petitioner to pick up a condenser from the Conner Company on the day of the collision; 3) Respondent did not direct Petitioner's route; 4) May anticipated that Petitioner would return within approximately 45 minutes; and 5) Petitioner picked up the condenser as directed and was transporting it at the time of the collision.

The police reports in evidence reflect that May told an investigating officer that Petitioner left to make his pick-up at approximately 11:15 AM. The reports also reflect that an employee of the Conner Company observed nothing unusual about Petitioner when he picked up the condenser and that the collision occurred at approximately 12:39 PM. Respondent's president, Beverly May, acknowledged that employees were afforded half-hour lunch breaks and were permitted to use company vehicles to take those breaks. T. 83.

While it is true that Petitioner was not on a direct route to complete his delivery at the time of the collision, the evidence as a whole supports the Arbitrator's **[*3]** conclusion that his deviation from that route was not so substantial as to remove him from the scope of his employment.

In affirming the Arbitrator, the Commission also applies an alternative "**traveling** employee" analysis.

Respondent agrees that Petitioner was a "**traveling** employee". As such, Petitioner is afforded extra protection under the Act, under the rationale that he is exposed to the risks of the streets to a greater extent than members of the public. Potenzo v. Illinois Workers' Compensation Commission, 378 Ill.App.3d 113, 118 (1st Dist. 2007). Respondent maintains, however, that despite Petitioner's status, he is not entitled to compensation because his actions immediately prior to the collision were neither reasonable nor foreseeable. Specifically, Respondent contends that Petitioner passed illegally and was speeding inside a construction zone immediately before he struck the rear of a dump truck.

The witness statements, which were offered by Respondent, reflect varying estimates of Petitioner's speed (55-60, "more than 65" or "well over 70" miles per hour) shortly before the collision. Other reports, also offered by Respondent, show that **[*4]** the collision occurred "just as vehicles were entering [a] construction zone" and immediately after the dump truck made a right turn out of a driveway into the roadway ahead of Petitioner. These reports also reflect that the dump truck driver had achieved a speed of only 20 or 25 miles per hour immediately before Petitioner had to change lanes to avoid striking construction cones and enter the lane in which the truck was **traveling.** They also strongly suggest that Petitioner would not have been able to see the dump truck until after he got past another vehicle described as a "large cement mixer". The Commission finds it reasonable to infer that Petitioner did not anticipate simultaneously encountering three unusual driving conditions, i.e., construction cones ahead of him in his lane of travel, a reduced speed zone and a relatively slow-moving dump truck to his right, in the only lane he could move to. While Petitioner might well have been able to avoid the collision had he been **traveling** more slowly, excessive speed, standing alone, does not disqualify a claimant from recovering benefits under the Act. Stembridge Builders, Inc. v. Industrial Commission, 263 Ill.App.3d 878, 883 (2nd Dist. 1994). **[*5]** There is no evidence in the record to suggest that Petitioner was impaired at the time of the accident or that he had any history of unsafe driving. In fact, Beverly May characterized Petitioner as a "good worker" and indicated that she found nothing in the truck after the accident to suggest that Petitioner had been drinking or using drugs. T. 86, 88. In the Commission's view, Petitioner's conduct did not so deviate from Respondent's business that it took him out of the scope of his employment, 263 Ill.App.3d at 883.

The Arbitrator found an average weekly wage of $ 480.00. According to the Arbitrator,

Petitioner testified that he earned $ 12.00 per hour and "worked 40 hours each week". The Commission views the evidence differently. Petitioner did testify to making $ 12.00 per hour and working "full time" but readily acknowledged that Respondent did not always have work available and that he was free to leave if there was nothing for him to do. T. 9, 40. The Arbitrator also found that Petitioner frequently worked more than 40 hours per week, citing Respondent's wage statement (RX 4). Again, the Commission views the evidence differently. RX 4 actually shows **[*6]** that Petitioner earned less than $ 480.00 in forty of the weeks preceding his accident. RX 4 also shows total regular earnings of $ 20,531.50 during the year before the accident. The Commission cannot apply the "weeks and parts thereof' analysis suggested by Petitioner because RX 4 does not reflect the days that Petitioner worked. The Commission arrives at 'a modified average weekly wage of $ 394.83 by dividing $ 20,531.50 by 52. The Commission also notes that Respondent stipulated to an average weekly wage of $ 394.83. Arb. Exh 1. This modification gives rise to a modified temporary total disability rate of $ 263.22 and a modified permanency rate of $ 236.88.

The Arbitrator awarded temporary total disability benefits during two intervals (June 20, 2001 through January 7, 2002 and February 25, 2002 through April 3, 2003) and indicated that these intervals totaled 88 4/7 weeks. In fact, they total 86 4/7 weeks. The Commission corrects this aspect of the Decision.

The Commission otherwise affirms and adopts the Decision of the Arbitrator, a copy of which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of **[*7]** $ 263.22 per week for a period of 86-4/7 weeks, that being the period of temporary total incapacity for work under §8(b) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 236.88 per week for a period of 250 weeks, as provided in §8(d)2 of the Act, for the reason that the injuries sustained caused the loss of a person as a whole to the extent of 50%.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner the sum of $ 29,909.01 for medical expenses under §8(a) of the Act.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under § 19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $ 75,000.00. The probable cost of the record to be filed as return to Summons is the sum of $ 35.00, payable to the Illinois Workers' Compensation Commission in the form of cash, check or money order therefor and deposited with the Office of the Secretary of the Commission.

[*8] Dated: FEB 4 2009

ATTACHMENT:

ILLINOIS WORKERS' COMPENSATION COMMISSION ARBITRATION DECISION

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable Joann M. Fratianni arbitrator of the Commission, in the city of Wheaton on October 16, 2006. After reviewing all of the evidence presented, the arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

C. Did an accident occur that arose out of and in the course of the petitioner's employment by the respondent?
F. Is the petitioner's present condition of ill-being causally related to the injury?
G. What were the petitioner's earnings?
J. Were the medical services that were provided to petitioner reasonable and necessary?
K. What amount of compensation is due for temporary total disability?
L. What is the nature and extent of the injury?

FINDINGS

. On June 19, 2001, the respondent Gene May, Inc. *was* operating under and subject to the provisions of the Act.
. On this date, an employee-employer relationship *did* exist between the petitioner **[*9]** and respondent.
. On this date, the petitioner *did* sustain accidental injuries that arose out of and in the course of employment.
. Timely notice of this accident *was* given to the respondent.
. In the year preceding the injury, the petitioner earned $ 24,960.00; the average weekly wage was $ 480.00.
. At the time of injury, the petitioner was 22 years of age, *single* with no children under 18.
. Necessary medical services *have not* been provided by the respondent.
. To date, no compensation has been paid by the respondent for TTD and/or maintenance benefits.

FINDINGS AS TO DISPUTED ISSUES

C. Did an accident occur that arose out of and in the course of the petitioner's employment by the Respondent?

Petitioner testified that on June 19, 2001, he was employed by respondent as a heating and air conditioning apprentice.

Petitioner testified that he had been employed at that time by respondent for around a year and as an apprentice for a total of three years. His duties included picking up and delivering parts and products using one of respondent's pick up trucks. His hours of work were generally from 7:00 a.m. to 4:30 p.m. with a half hour lunch at noon. The day **[*10]** would begin at respondent's shop in Sugar Grove, Illinois.

On June 19, 2001, petitioner was involved in a motor vehicle accident. He testified that he had no recollection of the events surrounding the accident, but recalled waking up at Edward Hospital two days later. A map of the area was introduced into evidence (Px1) depicting the location of the work site where petitioner was sent to pick up a new air conditioner and the site of the accident. The map reflects a five mile radius of the work site with the main arterial roads being Route 31 and East New York Street.

A police accident report introduced into evidence reflects that petitioner was in a hurry to get back to the job site and was lost. The report indicates that he was attempting to pass a vehicle and was **traveling** in excess of the posted speed limit. Excessive speed alone is insufficient to establish that an accident did not occur in the course of the employment, see *Stembridge v. Industrial Commission*, 636 N.E.2d 1088, 263 Ill.App.3d 878 (1994). The accident report further reflects that the Naperville police arrived on the scene at 12:39 p.m., or after the accident occurred.

[*11] Mr. Todd May testified on behalf of respondent. Mr. May is the son of the owner of respondent. Mr. May testified that the normal work hours were 8:00 am. to 4:30 p.m. Mr. May further testified that on June 19, 2001; he observed petitioner leave the job site with an air conditioning condenser which had been removed. The work site was located at 839 North Ohio Street. The condenser was placed in the pick up truck that petitioner was driving at approximately 11:15 a.m. Mr. May testified that he was familiar with the area and was of the opinion that petitioner could have traveled to the Connor Company to dispose of the unit in approximately 15 minutes.

Mr. May further testified that it was acceptable for petitioner to use the company truck to go to lunch so long as it was in the general area of the job site. Mr. May further testified that petitioner called him while he was driving the truck on that date and time and asked him if they would be needing any other supplies other than the new condenser. Mr. May testified that around one hour after petitioner left the job site, he attempted to call him on his cell phone and did not receive a response.

Mr. May further testified that he saw **[*12]** the truck following the accident and that the new condenser was still in the back of the truck.

Ms. Beverly May testified on behalf of respondent. Ms. May testified that she is the wife of the owner of respondent and the president of the company. She testified that respondent had a policy of not allowing use of trucks for personal reasons but that it was perfectly acceptable for the trucks to be used to get lunch, gas and for other errands on behalf of the company. Ms. May testified that petitioner had been a very good employee and had never been disciplined for any other activities during his period of employment. She further testified that had petitioner not been injured, she would be pleased to continue his employment.

Generally, motor vehicle accidents involving company vehicles are accidents under this Act. Although accidents occur in the general public with motor vehicles, when an employee is required to use a motor vehicle to travel in the futherance of his employer's interests, then the matter is compensable under the Act.

The exception is generally a deviation from employment duties, or a **detour** having nothing to do with employment. Whether petitioner at that moment was **[*13]** getting lunch, had completed eating lunch, had purchased gasoline, or was simply lost does not reflect a **detour** or deviation sufficient to deny compensation. In this instance, petitioner was permitted to use respondent's vehicle to obtain lunch. The map introduced into evidence (Px1) showing the locations involved does not seem to reflect a substantial deviation or **detour** where a reasonable person could conclude that petitioner was acting outside of the scope of his employment at the time of the accident.

Based upon the above, the Arbitrator finds that petitioner at the time of the accident was performing a task or duty on behalf of respondent as he was employed to do, see *Ceisel v. Industrial Commission*, 400 Ill. 574, 81 N.E.2d 506 (1948). Based further upon the above, the Arbitrator finds that insufficent evidence was presented that would rebut the presumption that petitioner was in fact performing a task on behalf of respondent at the time of the accident. Based further upon the above, the Arbitrator thus finds that on June 19, 2001, petitioner sustained accidental injuries which arose out of and in the course of his employment by **[*14]** respondent.

F. Is the petitioner's present condition of ill-being causally related to the injury?

See findings of this Arbitrator in "C" above.

Petitioner sustained a bilateral mid shaft femur fracture, a hip fracture, liver lacerations, bilateral rib fractures, a bimalleolar fracture of the right ankle, a left hemopneumothorax, acute

respiratory failure, paralytic ileus, a laceration of the right hand, a laceration of the right knee, and a closed head injury. As a result, petitioner underwent several surgical procudures in the form of an open reduction and internal fixation of the tibia, the fibula, an open reduction and internal fixation of both femurs, closure of various skin lacerations and insertion of a left chest tube to relieve the collapsed lung. These surgical procedures were performed by Dr. Walsh.

Following these procedures, petitioner developed a right foot drop along with some misalignment of several of the fracture sites. On December 17, 2001, Dr. Walsh noted that petitioner was still experiencing the right foot drop and had developed a malunion of the talus. In addition, inserted hardware fixating devices were becoming symptomatic and Dr. Walsh prescribed additional **[*15]** surgery.

Dr. Walsh further noted that petitioner was running out of disability benefits and released him to return to work with restritions of no stair climbing, no ladder climbing and no lifting more than 30 pounds. Dr. Walsh at the time felt these restrictions to be permanent in nature.

On January 7, 2002, petitioner returned to work with his medical restrictions and worked in such a fashion until February 25, 2002.

On February 25,.2002, petitioner underwent additional surgery with Dr. Walsh to remove various inserted hardware fixation devices and to fuse the right ankle. Dr. Walsh during surgery indicated that if the fusion failed or became infected, then petitioner would be forced to undergo a below the right knee amputation. Petitioner last saw Dr. Walsh on April 3, 2003.

Petitioner testified that prior to this accident he had never suffered another accident or injury to his body. Petitioner testified that at the present time he experiences severe pain in his right knee, right ankle and right hip and experiences difficulty in standing for long periods of time without being forced to sit or rest: Petitioner is also diabetic.

Based upon the above, the Arbitrator finds that **[*16]** the conditions of ill-being as noted above are causally related to the accidental injury of June 19, 2001.

G. What were the petitioner's earnings?

Petitioner testified that he was paid $ 12.00 per hour while working for respondent and that he worked 40 hours each week. A wage statement introduced into evidence (Rx3) reflects that petitioner did not work every single work day for the year preceding this accident, but that he often worked in excess of 40 hours a week for many weeks.

Pursuant to the provisions of Section 10 of the Act, should the days not worked be subtracted and the remaining time calculated by the number of weeks worked, petitioner will have earned an average weekly wage of $ 480.00 per week, which would result in annual earnings of $ 24,960.00.

Based upon the above, the Arbitrator finds the average weekly wage to be $ 480.00 and the earnings for the year preceding the injury to be $ 24,960.00.

J. Were the medical services that were provided to petitioner reasonable and necessary?

Petitioner introduced into evidence the following medical charges which were incurred following this accidental injury:

Edwards Hospital	$ 152,915.08
Valley West Hospital	$ 5,281.93
Dr. Augustinsky	$ 376.00
Dr. Rester	$ 110.00
Dr. Walsh	$ 2,973.00

[*17] These charges total $ 161,656.01.

Of the above amounts, respondent's group health insurance carrier has paid the sum of $ 131,747.00, leaving a balance due of $ 29,909.01.

Respondent's sole objection to the above charges was to the issue of liability.

Having found liability in "C" and "F" above, the Arbitrator further finds that the above medical charges represent reasonable and necessary care and treatment for this injury and further finds respondent liable to petitioner in the amount of $ 29,909.01. Respondent is to hold petitioner safe and harmless from all attempts at reimbursement by the group health insurance provider in the amount of $ 131,747.00 in accordance with Section 8(j) of the Act.

K. What amount of compensation is due for temporary total disability?

See findings of this Arbitrator in "F" above.

Based upon the above, and based upon the records of Dr. Walsh in evidence, the Arbitrator finds that as a result of this accidental injury, petitioner was temporarily and totally disabled from work commencing June 20, 2001 through January 7, 2002 and again commencing February 25, 2002 through April 3, 2003, and is entitled to receive compensation from respondent for these **[*18]** periods of time.

L. What is the nature and extent of the injury?

See findings of this Arbitrator in "F" above.

Petitioner is now employed in a receiving department and still has significant metal fixation hardware where his many fractures were sustained. Petitioner currently is under medical restrictions which are permanent in nature and which include no ladder or stair climbing, no extensive walking and limited lifting to 30 pounds.

Based upon the above, the Arbitrator finds that the condition of ill-being is now permanent in nature.

ORDER

. The respondent shall pay the petitioner temporary total disability benefits of $ 320.00/week for 88-4/7 weeks, from June 20, 2001 through January 7, 2002, and from February 25, 2002 through April 3, 2003 which is the period of temporary total disability for which compensation is payable.

. The respondent shall pay the petitioner the sum of $ 288.00/week for a further period of 250 weeks, as provided in Section 8(d)2 of the Act, because the injuries sustained caused the permanent partial disability to his person to the extent of 50% to his person as a whole thereof.

. The respondent shall pay the petitioner compensation that has accrued **[*19]** from June 19, 2001, through October 16, 2006, and shall pay the remainder of the award, if any, in weekly payments.

. The respondent shall pay the further sum of $ 29,909.01 for necessary medical services, as provided in Section 8(a) of the Act.

RULES REGARDING APPEALS Unless a *Petition for Review* is filed within 30 days after receipt of this decision, and a review is perfected in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If this award is reviewed by the Commission, interest of 4.96% shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Joann M. Fratianni
ARBITRATOR

February 13, 2007

Date

FEB 20 2007

DISSENTBY: NANCY LINDSAY

DISSENT: I respectfully disagree with the Majority's Decision finding that Petitioner sustained an accident that arose out of and in the course of his employment. As the Majority correctly noted in its Decision the police reports in evidence fail to reflect that "petitioner was hurrying to get back to the job site **[*20]** and was lost" at the time of the construction zone accident. Rather, the reports show that Petitioner was driving anywhere from 55 to 75 miles per hour in a construction zone (with a 25 mile per hour speed limit) when he improperly passed a number of vehicles and drove into the rear of a cement truck. He was exceeding the speed limit and improperly passing vehicles both in violation of the Illinois Motor Vehicle Code. There is nothing to support the conclusion Petitioner was lost or hurrying to get back to work. In fact, there is no evidence in the record explaining why Petitioner was at the location of the accident he was involved in. At most, there is speculation. The location was not on the direct route between Connor Company and the job site. Todd May, Petitioner's supervisor/foreman, did not direct, order, authorize, permit, or allow Petitioner to deviate from the direct route back from Connor Company to the job site. Mr. May further testified that he did not give Petitioner permission to go anywhere else after he left Connor Company on the day of the accident; rather, he instructed him to return to the job site directly. It appears he was heading in the opposite direction at **[*21]** the time of the accident and not where he was expected to be. Company vehicles, such as the one Petitioner was driving on the day of the accident, weren't to be used for personal use. While employees could use a company vehicle to go to lunch if the lunch facility was in the general area of the job, permission was required. Mr. May did not recall permission being requested and, further, there were no fast food restaurants in the vicinity of the accident.

It is Petitioner's burden to prove he sustained an accident arising out of and in the course of his employment. Petitioner failed to prove either element. He failed to prove he was performing a task at the time of the accident on behalf of the Respondent. What he was doing in the vicinity of the construction zone is simply not know. What is known, however, was that his employer had not authorized him to be in that area. What is also known is that Petitioner's own reckless conduct increased his risk of injury. Even assuming Petitioner was a **traveling** employee at the time of the accident, his conduct and presence at the accident scene were neither reasonable nor foresee able. The Majority's Decision is unsupported by the evidence and **[*22]** contrary to applicable law. For these reasons, I dissent.

Legal Topics:

For related research and practice materials, see the following legal topics:

Workers' Compensation & SSDI > Administrative Proceedings > Claims > Time Limitations > Notice Periods

Workers' Compensation & SSDI > Compensability > Course of Employment > Personal Comfort

Workers' Compensation & SSDI > Compensability > Injuries > Accidental Injuries

Source: **Legal > States Legal - U.S. > Illinois > Find Statutes, Regulations, Administrative Materials & Court Rules > IL Workers' Compensation Decisions**
Terms: **traveling and detour or frolic** (Edit Search | Suggest Terms for My Search)
View: Full
Date/Time: Friday, January 21, 2011 - 10:49 AM EST

In