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UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of Delaware, New Castle County.

Courtney E. COLLIER,
Employee-Appellant,
v.
STATE of Delaware, Employer-Appellee.

Civ. A. No. 93A-06-022.
|
Submitted: April 20, 1994.
|
Decided: July 11, 1994.

Upon consideration of Appellant/Employee's appeal from the decision of the Industrial Accident Board.

ORDER

DEL PESCO, Judge.

***1** This 11th day of July, 1994, upon consideration of the decision of the Industrial Accident Board ("Board"), appellant/employee's opening brief, and appellee/employer's answering brief on appeal, it appears:

S. Courtney E. Collier ("Ms. Collier") was allegedly injured while employed by the State of Delaware ("State"). This case raises the issue of whether a journey to work is brought within the scope of employment where the employee is reimbursed on a milage basis for driving one day a week to work in another part of the State. The Board ruled that Ms. Collier was traveling to work, and not acting in the scope of her employment at the time the injuries were sustained. I reverse. Under the totality of the circumstances-that Ms. Collier normally walked to work, was compensated for the miles driven, provided transportation for her legal assistant, and did not deviate from her trip for any personal errands-Ms. Collier was acting within the scope of her employment at the time she was injured.

I.

The facts are not in dispute. On August 23, 1991, shortly after 8:00 a.m., Ms. Collier left her home to drive to Sussex County Courthouse. After she started her car, she noticed that she did not have enough gas to complete the trip. She stopped at her bank to use the cash machine but it was inoperative. She was able to withdraw $10 from the cash machine at the Acme across the parking lot from her bank. She did not enter the Acme for any reason other than getting cash and did not purchase anything. She slipped and fell in the parking lot as she was walking back to her car.

Ms. Collier had been employed as a Master of the Family Court since May 1989. Her primary place of employment was in the Family Court building in Wilmington. Under the terms of her employment agreement and a Federal Grant, Ms. Collier would travel every Friday from her home base in Wilmington to either Dover or Sussex to hear child or spousal support cases. Ms. Collier would drive her personal vehicle directly from her home to Dover or Sussex and would be reimbursed at the rate of $.20 per mile based on the distance from her primary workplace in Wilmington to the courthouse in Dover or Sussex. The milage is set by the State at 90 miles for Dover and 182 miles for Sussex. Employees are required to deduct the number of miles they drive from home to their primary place of employment from these set figures.

Ms. Collier lives on the 1300 block of North Harrison Street, Wilmington Delaware. Until August 23, 1991, Ms. Collier would walk to work at the Family Court in Wilmington Monday through Thursday. Ms. Collier only drove to work on Fridays when she had to travel to Dover or Sussex. Typically, she would leave her home around 8:00 a.m. Friday morning, pick up her legal assistant, and drive directly to the Dover or Sussex courthouse. Ms. Collier would submit a voucher for her milage after each of these Friday trips according to the figures set by the state.

***2** The Board denied Ms. Collier's Petition to Determine Compensation because it found that the accident did not occur "on or about the premises of her employer." *IAB Opinion* at 3. The Board did not make any findings of fact regarding the cause, nature, and scope of Ms. Collier's injuries. *Id.* The Board concluded that Ms. Collier's injury was not compensable because she was going to work, and therefore, not acting within the scope of her employment at the time of the accident. The Board further held that the

compensation Ms. Collier received for her expenses related to the trip was insufficient to bring the trip within the scope of her employment and justify an exception to the coming and going rule. Ms. Collier appealed.

II.

Whether Ms. Collier's injuries occurred during the scope of employment is a legal conclusion determined by the facts. *See Histed v. E.I. DuPont de Nemours & Co.,* Del.Supr., 621 A.2d 340, 342 (1993). In reviewing a Board's decision, this Court may not weigh the evidence, determine questions of credibility, or make factual findings and conclusions. *Breeding v. Contractors-One-Inc.,* Del.Supr., 549 A.2d 1102, 1106 (1988). If the Board's factual findings are supported by substantial evidence, this Court may only reverse a Board decision if it misapplied or misinterpreted the law.

All legal conclusions regarding a claim for compensation must be consistent with the purposes of the Worker's Compensation Act. *Histed,* at 342. Delaware's Workmen's Compensation Law provides benefits for personal injuries "arising out of and in the course of the employment." 19 *Del.C.* § 2301(15). Although coverage is provided for injuries which occur on the employer's premises, coverage is not provided for injuries sustained during an employee's regular travel to and from work because employees face the same hazards during daily commuting trips and on personal excursions as does the general public. *Histed,* at 343. This exclusion is generally known as the "coming and going" rule.

Nonetheless, because Delaware's Worker's Compensation Act "must be interpreted liberally to fulfill its intended compensation goal under § 2304," *Histed,* at 342, the Board should narrowly interpret the coming and going rule and broadly interpret the exceptions so that coverage is not denied wherever the injuries can fairly be characterized as arising out of the employment. Within this context, the inquiry is not whether the injury can be found to have occurred while Ms. Collier was going to work, but, rather, whether there is a sufficient nexus between Ms. Collier's employment and her injury that it may be said that her injury was a circumstance of her employment. Such nexus exists when the employer requires an employee to perform a "special errand," or when the employer agrees to compensate the employee for travel and the reimbursement is reasonably related to the cost of travel. *See, e.g., Histed,* at 345 (interpreting both the special errand and compensation exceptions to the coming and going rule).

***3** The Board correctly concluded that Ms. Collier's injuries were not sustained during the course of a special errand because she was performing her routine duties. The special errand exception to the coming and going rule brings a journey that would otherwise not be covered under the coming and going rule, "within the course of the employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself." *Histed,* at 343, *citing* 1 A. Larson, The Law of Worker's Compensation § 16.10 (1990). In *Histed,* the court reviewed cases from other jurisdictions and found that the common theme for determining whether the claimant's injuries were compensable under the special errand exception was whether there was an element of urgency to the trip. *Id.* at 343-44. Ms. Histed's trip was found to qualify for compensation under the exception because she was responding to an urgent call from her employer and was not performing her routine duties when she was injured. *Id.* at 345. Ms. Collier's trip that Friday was part of her normal work duties, was not urgent, and therefore was not a "special errand."

Nonetheless, Ms. Collier's injuries are compensable under the Worker's Compensation Act because the State compensated her for travel expenses. "[W]hen the employee is paid an identifiable amount as compensation for time spent in a going or coming trip, the trip is within the course of employment." 1 A. Larson, The Law of Workers' Compensation § 16.21 (1990) (citations omitted). The compensation exception to the coming and going rule, adopted by a majority of the states, was formally applied by the Delaware Supreme Court in *Histed.* Although the employee in *Histed* also presented ample evidence to bring the employee's trip under the special errand exception, the *Histed* court also noted that "standing alone, the existence of travel pay is strong evidence that an employee is acting within the course and scope of employment while on a trip to and from work." *Histed,* at 345. The Board found that Ms. Collier was reimbursed for her costs of travel downstate. *IAB Opinion* at 2.

In rejecting Ms. Collier's claim, the Board considered the compensation exception and, relying on *Peer v. Workmen's Compensation Appeal Board,* Pa.Commw., 503 A.2d 1096 (1986), determined that the exception did not apply where car fare is paid based on a formula and not based on the

actual distance traveled. The Board's reliance on *Peer* is misplaced. First, *Peer* is distinguishable because the travel allowance paid by the employer was based on the distance between City Hall and the destination, without consideration of the actual distance travelled. *Peer,* at 1098. In contrast, Ms. Collier's travel reimbursement was based on the actual distance travelled beyond the employee's normal commute.

***4** Second, Pennsylvania requires that the employee be "actually engaged in the furtherance of the business or affairs of the employer" to be entitled to compensation, 77 P.S. § 411(1), while Delaware provides compensation for injuries "arising out of and in the course of employment." Thus, Pennsylvania has adopted a different approach to workman's compensation law and therefore its case law is of limited persuasive authority in Delaware. *See Histed,* at 342 and n. 1 *citing* 1 A. Larson, The Law of Worker's Compensation § 6.10 (1990).

Third, the Board's reliance on *Peer* was misplaced because there are Delaware cases which are dispositive. In 1989, this Court stated that if an employer agreed to pay an employee for travel, the trip would be in the course of employment. *Cook v. A.H. Davis & Son, Inc.,* Del.Super., 567 A.2d 29, 32 (1989). The *Cook* court found that such compensation would bring the trip within the scope of employment regardless of whether other rules also brought the trip within the scope of employment. *Id.*

In *Histed,* the Delaware Supreme court held that compensation for the *time* it took the employee to travel to work brought the trip within the scope of the employment. *Histed,* at 343. The *Histed* court reviewed cases from other jurisdictions and found that of the forty-three states that have workmen's compensation statutes like Delaware's, *id.* at 342, a clear majority "follow the rule that a compensated trip is within the course and scope of employment," *id.* at 345. Although the question here is whether compensation for the *expense* of travel to work brought the trip within the course of employment, *Histed* provides a sound basis for adopting the rule that compensation for travel expense brings an otherwise ordinary work commute within the scope of employment and worker's compensation coverage. Such questions can only be resolved by analyzing the totality of the circumstances presented under the facts of each case. *Id.* at 345.

Ms. Collier's trip was within the scope of her employment because she had to travel a substantial distance every Friday and she was provided additional compensation based on the actual distance she had to travel. "[E]mployment should be deemed to include travel when the travel itself is a substantial part of the service performed. The sheer size of the journey is frequently a factor supporting this conclusion." 1 A. Larson, The Law of Worker's Compensation § 16.31 (1990). Larson cited cases where compensation has been provided for injuries arising out of trips from eight to 200 miles in length. *Id.* (citation omitted).

Ms. Collier was reimbursed at a rate of $.20 per mile for trips of either 90 or 182 miles round trip. These are substantial distances. Since the State agreed to pay Ms. Collier for travel, the trip was in the course of her employment. The question then becomes: when did the work related trip begin?

Under the totality of these circumstances, her work related trip began when she got into her car that morning. Ms. Collier walked to work when she heard cases in Wilmington. She was not required to report to the Family Court in Wilmington before she drove to either Dover or to Sussex. It was expected that she would leave from home. Although the record does not state whether she was required to provide a ride for her legal assistant, it appears that legal assistants are not compensated for travel. Ms. Collier's journey to work began after she got into her car and started on her trip to Sussex.

***5** In its brief, the State argued that even if the trip itself was within the scope of her employment, Ms. Collier's trip into the Acme was a deviation from the business trip because it was a personal errand. In support of its argument, the State distinguished the circumstances surrounding Ms. Collier's claim from those surrounding the claim submitted in *Airport Shuttle Service, Inc. v. Curran,* Del.Supr., 247 A.2d 204 (1971). In *Curran,* the court found that even if the employee had engaged in a personal errand during his scheduled work time, the accident was compensable because it occurred after the employee had resumed the regular business route. *Id.* at 207.

Ms. Collier was not running a personal errand at the time of the accident. She stopped to get money to purchase gas so that she could drive to Sussex. She fell as she was returning to her car, on her way to pick up her legal assistant and drive to Sussex. This errand was clearly related to the business purpose of the trip. Accordingly, I reverse and remand this case to the Board with instructions to enter an appropriate award in Ms. Collier's favor.

IT IS SO ORDERED.

All Citations

Not Reported in A.2d, 1994 WL 381000

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