CHARLOTTE HUDSON, Employee,
v.
BOSCOV'S INC., Employer.

INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

Hearing No. 1395398

Mailed Date: July 22, 2013
July 17, 2013

ORDER

Charlotte Hudson ("Claimant") filed a Petition to Determine Compensation Due related to an accident that occurred on February 1, 2013 at Boscov's. On July 10, 2013, the Board entertained a hearing on Boscov's Inc.'s ("Boscov's") Motion to Dismiss. The hearing on Claimant's Petition is scheduled for August 22, 2013. Boscov's presented its Motion to Dismiss, arguing that Claimant was not working and was not within the course and scope of employment at the time of her accident. Claimant argues that she was injured within the course and scope of her employment.

The parties submitted a stipulation of facts in lieu of presenting any witnesses to testify at the hearing. The parties agreed that Claimant worked for Boscov's, but was not scheduled to work on February 1, 2013. They also agreed that February 1st was a payday and that Boscov's pays its employees on a weekly basis. Claimant went to Boscov's on February 1st, picked up her paycheck, purchased a crock-pot with her employee discount, and was injured on her way out of the store, Claimant was scheduled to work on February 2nd and her paycheck would have been available to be picked up on that date.

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Boscov's argues that although Claimant was on its premises at the time of the accident, she was on the premises for a purely personal visit to shop and pick up her paycheck, which she could have done the next day when she was scheduled to work. Claimant's presence at Boscov's on February 1st was unrelated to her employment and was of no benefit to Boscov's. Claimant was outside of the course and scope of her employment when she was injured.

Boscov's presented cases that involved an employee who was injured on the employer's premises on his or her day off and the injury was found to be compensable, including the case of *Barkas v. Delhaize America, Inc.,* JAB No. 1281230 (December 18, 2006). Boscov's argues that those cases are distinguishable from the case at hand because the employee in those cases had been called into work for a meeting or to fill out paperwork, whereas Claimant went to Boscov's by her own choice to shop and pick up her paycheck. There was some work-related benefit provided by the employees to the employers in the other cases, but not in the case at hand.

Boscov's also presented cases from other states in which the injuries were found to be compensable when the employee went to a different location to pick up the paychecks. In *Mendoza v. Liberty Northwest Ins. Corp. and Dameron Property Management,* Oregon WC Board No. 1003257 (June 12, 2013), the injuries were found to be compensable because the employee was delivering the checks to other employees, which is a benefit to the employer because then the employer did not need to mail the checks. However, in Texas, the court found that the employee was not within the course and scope of employment when the employee was injured when she went into work to pick up a paycheck when she was not scheduled to work.[1]

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Boscov's also argued that the Delaware Superior Court affirmed the Board's decision to deny benefits when an already injured employee was injured again when picking up a check from the employer. *Brittingham v. Draper King Cole,* Del. Super. Ct., C.A. No. 91A-11-002, Ridgely, P.J. (June 15, 1992). The Board denied benefits because picking up a paycheck is not within the course and scope of employment. Boscov's argued

that the pending case is similar to the *Brittingham* case in that Claimant was at work simply to pick up a paycheck and to shop and, therefore, she was not within the course and scope of employment when she was injured. Claimant argues that *Brittingham* involved a motor vehicle accident and a traveling employee, so it has no relevance to the case at hand.

Claimant argues that the Delaware Supreme Court has recently stated that the Board has been focusing on the wrong point in the decisions involving course and scope of employment hearings, as the Board first looks at the exceptions to the rules rather than starting the analysis with the employment agreement, *See Spellman v. Christiana Care Health Services,* Del. Supreme, No. 315, 2012, Jacobs, J. (April 8, 2013). The Supreme Court held that "If the evidence of the contractual terms resolves the issue of whether the injure arose out of and occurred in the course of the claimant's employment, then the analysis can end." *Id.* at *12. Claimant argues that the Supreme Court indicates that the Board should look at the basic issue that Claimant was working in order to get paid and was injured while picking up her paycheck and, therefore, the injury is compensable. A fundamental part of the employment relationship is when the employee gets the paycheck on payday, which is what Claimant was doing when she was injured.

Claimant argues that the Supreme Court in *Spellman* instructs that the Board should simply look at the fact that Claimant was picking up her paycheck when she was injured, which

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is within the course and scope of her employment, and then the analysis should end at that point. Boscov's argues that Claimant's argument about bow the Board should look at this case is too simplistic. Boscov's also argues that the Supreme Court in *Spellman* held that course and scope of employment cases are highly factual and that there is a requirement that the injury be work-related for it to be compensable and that Claimant's injury is not work-related.

There is no question that in order to be eligible for workers' compensation, Claimant's February 1, 2013 injury must have been "by accident arising out of and in the course of employment." 19 *Del. C.* § 2304. For the following reasons, the Board finds that Claimant has not met her burden of proof.

In light of the Supreme Court's decision in *Spellman,* the Board will "look at the big picture" as Claimant argued and when doing so, the Board finds that Claimant was not injured within the course and scope of her employment. Claimant was at Boscov's on February 1, 2013 for her own personal convenience to pick up her paycheck and to shop. Unlike the case in *Spellman,* the "contractual terms" of Claimant's employment does not resolve the issue. The "contractual terms" of her employment did not require her to come in on her day off to pick up her paycheck nor to then do personal shopping in the store afterwards. Claimant was not told to pick up her paycheck that day or to go to Boscov's that day for any reason; the paycheck would have been available the following day when Claimant was scheduled to work. Claimant chose to pick up her paycheck that day, which she was certainly entitled to do; however, her decision to pick up the paycheck on that particular day does not then mean that her injury is work-related. She was not working on February 1st when she was injured and she was not providing any benefit to Boscov's by picking up her paycheck that day; Boscov's would have held the

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paycheck for her and was not going to mail the paycheck if Claimant did not pick it up on February 1st. The simple act of picking up the paycheck on her day off does not put Claimant within the course and scope of her employment.

Based on the foregoing reasons, the Board finds that Claimant was not acting within the course and scope of her employment when she was injured on February 1, 2013; therefore, the Board GRANTS Boscov's Motion to Dismiss

Claimant's Petition to Determine Compensation Due.

IT IS SO ORDERED THIS 17th DAY OF JULY 2013.

INDUSTRIAL ACCIDENT BOARD

/s/_____
Victor R. Epolito, Jr.

/s/_____
Mary Dantzler

I hereby certify that the above is a true and correct Order of the Industrial Accident Board.

/s/_____
Julie G. Bucklin
Workers' Compensation Hearing Officer

Mailed Date: 7/22/2013

/s/_____
OWC Staff

cc: Walt F. Schmittinger, Esquire, for Claimant
Cassandra F. Roberts, Esquire, for Employer

Notes:

[1.] The case name was not written on the copy of the decision provided to the Board, so the only identifying information regarding that case is that the insurance carrier was Zurich American Ins. Co. with an Appeal No. 031032 and it was decided on June 12, 2003 by Appeals Judge Thomas A. Knapp.
