ROBERT J. GELDERT, Employee/Appellant, v. HENNEPIN CNTY. ADULT CORR., SELF-INSURED, Employer, and HEALTHPARTNERS, INC., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
OCTOBER 20, 1999

No. [REDACTED SSN]

HEADNOTES

ARISING OUT OF & IN THE COURSE OF - DEVIATION FROM EMPLOYMENT. Substantial evidence supports the compensation judge's determination that the employee's "side-trip" to his home in northeast Minneapolis to pick up his wallet was a personal errand, and that the employee had deviated from the normal business route between the treatment program in southeast Minneapolis where he had transported two residents and the Hennepin County Government Center where a meeting was scheduled later that morning. The compensation judge's determination that the employee's fall down the steps as he exited his home did not arise out of or in the course of his employment, and was not compensable, is supported by the evidence and is legally correct.

Affirmed.

Determined by: Johnson, J., Rykken, J., and Wheeler, C.J.
Compensation Judge: Joan G. Hallock

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's determination that his injury on February 12, 1997 did not arise out of his employment and from the judge's denial of workers' compensation benefits. We affirm.

BACKGROUND

Robert J. Geldert, the employee, has worked for Hennepin County, the employer, for 15 years, at the Hennepin County Adult Correction Facility (ACF) in Plymouth, Minnesota. His primary duty is driving incarcerated persons from the ACF to various treatment centers. The employer provides the employee with a vehicle to use in his work. (T. 13-15.) The employee drives his own vehicle to and from work. When he arrives at work, the employee obtains the keys for the employer's vehicle which the employee uses to transport inmates. (Stip. No. 3.)[1]

[1] The parties made ten stipulations of fact that were read into the record at the hearing. (See Findings & Order; T. 6-8.)

On February 12, 1997, the employee was scheduled to work from 5:30 a.m. to 1:30 p.m. at the ACF in Plymouth. He drove his own vehicle to the facility, then picked up the keys for a station wagon provided by the employer for his use during the day. That morning, the employee delivered interoffice mail and food on the grounds of the ACF and drove to the post office and back. At approximately 8:00 a.m., the employee picked up two residents from the ACF and drove them to the Genesis Treatment Program in southeast Minneapolis, located at approximately 36th and University Avenue. At about that time, the employee realized he had forgotten his wallet at home. The wallet contained his driver's license and a parking card allowing vehicle access to the parking ramp at the Hennepin County Government Center. (T. 16-17.) After dropping off the ACF residents at the treatment program, the employee decided to go home and get his wallet. At this point, he was approximately five to ten miles from his home at 3347 Lincoln Street Northeast, Minneapolis. The employee testified he was scheduled to attend a meeting at the Hennepin County Government Center that day and planned to drive to the Government Center to attend the meeting after picking up his wallet. He drove to his house, went in, picked up the wallet and left the house. (Stip. Nos. 2, 3, 4; T. 14-18, 22-24, 26-28, 31.) As the employee walked out of his house, he slipped on the stairs and sustained injuries. (Stip. No. 5; T. 18.)

The employee testified he understood state law required him to have his Minnesota driver's license in his possession at all times. (T. 17.)[2] He also had an employer-provided parking card to use for Hennepin County business at the Government Center. The employee stated the employer expected him to have his driver's license and the parking card with him while he was working. (T. 24.) The employee acknowledged, however, that he could have parked on the street near the Hennepin County Government Center rather than parking in the building. (T. 28-29.) The employee further acknowledged he was not authorized to use the employer's vehicle for personal errands. (T. 24.)

Ms. Katie Lundeen was the employee's supervisor at the ACF in Plymouth.

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[2] Minn. Stat. § 171.08 provides:

> Every licensee shall have the license in immediate possession at all times when operating a motor vehicle and shall display it upon demand of a peace officer, an authorized representative of the department, or an officer authorized by law to enforce the laws relating to the operation of motor vehicles on public streets and highways. Unless the person is the holder of a limited license issued under section 171.30, no person charged with violating the possession requirement shall be convicted if the person produces in court or the office of the arresting officer a driver's license previously issued to that person for the class of vehicle being driven which was valid at the time of arrest or satisfactory proof that at the time of the arrest the person was validly licensed for the class of vehicle being driven. The licensee shall also, upon request of any officer, write the licensee's name in the presence of the officer to determine the identity of the licensee.

Ms. Lundeen testified the employee was expected to have his driver's license and the parking card with him at work. (T. 36.) The vehicle the employee drove on February 12, 1997 contained a cell phone. The employee did not call Ms. Lundeen to request her permission or to advise her that he was going home. Ms. Lundeen stated that had the employee told her he planned to go home to get his driver's license and parking card, she would have advised the employee that he needed to use vacation time to run that errand. (T. 25, 36.) The employee did call Ms. Lundeen after he slipped and fell to tell her he was going to the hospital. (T. 25.)

The employee filed a claim petition seeking payment of medical expenses and temporary total disability benefits.[3] The employer and insurer denied liability for the employee's injury. The case was heard by a compensation judge at the Office of Administrative Hearings on January 26, 1999. In a Findings and Order served and filed April 1, 1999, the compensation judge found the employee was on a personal errand on February 12, 1997, and that the employee deviated from the route he would have followed had he gone from the Genesis Treatment Center directly to the Hennepin County Government Center. Based on this finding, the compensation judge denied the employee's claim for workers' compensation benefits. The employee appeals.

STANDARD OF REVIEW

On appeal, the Workers' Compensation Court of Appeals must determine whether "the findings of fact and order [are] clearly erroneous and unsupported by substantial evidence in view of the entire record as submitted." Minn. Stat. § 176.421, subd. 1 (1992). Substantial evidence supports the findings if, in the context of the entire record, "they are supported by evidence that a reasonable mind might accept as adequate." Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 59, 37 W.C.D. 235, 239 (Minn. 1984). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Id. at 60, 37 W.C.D. at 240. Similarly, findings of fact should not be disturbed, even though the reviewing court might disagree with them, "unless they are clearly erroneous in the sense that they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

DECISION

"Every employer . . . is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment." Minn. Stat. § 176.012, subd. 1 (1992). The phrase "arising out of" requires evidence of a causal connection between the injury and the employment, while the phrase "in the course of employment" requires that the injury occur within the time and space boundaries of employment. Foley v. Honeywell, Inc., 488 N.W.2d 268, 271-72 (Minn. 1992) (citing Gibberd v. Control Data Corp., 424 N.W.2d 776, 780,

[3] HealthPartners, Inc. paid medical expenses and intervened in the case seeking reimbursement under Minn. Stat. § 176.191, subd. 3.

40 W.C.D. 1040, 1047 (Minn. 1988)). Whether an injury arose out of and in the course of employment is generally a fact question for the compensation judge. Franze v. Nat'l Delivery Serv., 49 W.C.D. 148, 155 (W.C.C.A. 1993), summarily aff'd, 505 N.W.2d 620 (Minn. 1993), and the burden of proof is on the employee/claimant. Minn. Stat. § 176.021, subd. 1.

As a general rule, injuries sustained while commuting to and from work are not compensable under the Workers' Compensation Act. See, e.g., Swanson v. Fairway Foods, 439 N.W.2d 722, 41 W.C.D. 1010 (Minn. 1989); Lehn v. Kladt, 312 Minn. 557, 250 N.W.2d 846, 29 W.C.D. 347 (1997). The employee, however, contends his injury is covered under the exception contained in Minn. Stat. § 176.011, subd. 16. This statute provides, in part, that "[w]here the employer regularly furnishe[s] transportation to employees to and from the place of employment such employees are subject to this chapter while being so transported . . . ." The employee argues his injury falls within the Act because he was operating a company-furnished vehicle at the time of the injury. We conclude the statute is not applicable in this case.

In Bonfig v. Megarry Bros., Inc., 249 Minn. 180, 199 N.W.2d 796, 26 W.C.D. 321 (1972) the employee was fatally injured in a motor vehicle accident while driving from an employer-sponsored dinner back to his motel. The supreme court affirmed the denial of workers' compensation coverage stating that "[a]n employee injured while driving an employer-owned motor vehicle, like an employee driving his own motor vehicle, has the burden of proving that he was at the time engaged in the performance of his regular duties or, if not, that he was performing emergency work or a special errand for his employer." See also, Cavilla v. Northern States Power Co., 213 Minn. 331, 6 N.W.2d 812, 12 W.C.D. 429 (1942). In Funk v. A.F. Scheppmann & Son Constr. Co., 294 Minn. 483, 199 N.W.2d 791, 792, 26 W.C.D. 332, 333 (1972) the supreme court again held that the statutory exception was "inapplicable with respect to an employee who, although using his employer's motor vehicle with the employer's permission, is traveling to or from his home for his own personal convenience and not in the performance of services for his employer." Thus, the fact that Mr. Geldert was permissively operating an employer's vehicle is not determinative on the issue of whether his injury at his home is covered by the Workers' Compensation Act. As the supreme court noted in Bonfig, "there is no perceptible legislative purpose in discriminating between two employees injured enroute to or from work on their own time merely because the one was driving his own motor vehicle and the other was driving his employer's." Bonfig, 199 N.W.2d at 799, 26 W.C.D. at 324. Accordingly, the employee must prove some other exception to establish that his injury was one arising out of and in the course of his employment.

"An injury is said to arise in the course of the employment when it takes place within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaged in something incidental thereto." Rondeau v. Metropolitan Council, 58 W.C.D. 338, 344 (W.C.C.A. 1998) (citing 1 A. Larson, Workers' Compensation Law § 14.00.) An employee is in the course of employment when the employee "does those reasonable things which his contract with his employment expressly or impliedly permits him to do." Fjeld v. Marshall County Co-op Oil Ass'n., 227 Minn. 274, 35 N.W.2d 448, 451 (1949). As a general rule, an employee whose job requires him to travel away from the

employer's premises is covered for workers' compensation purposes for the duration of the trip. See Snyder v. General Paper Corp., 277 Minn. 376, 152 N.W.2d 743, 24 W.C.D. 255 (1967).[4] However, an employee who is traveling for business purposes "will place himself beyond the scope of the act if he engages in a personal enterprise of his own, in the form of 'severable side trip.' In such a case, coverage is suspended until the employee completes the side trip or resumes travel towards his business goal." Williams v. Hoyt Constr. Co., 306 Minn. 59, 68-69, 337 N.W.2d 339, 346, 28 W.C.D. 101, 111 (1975).

The compensation judge found the employee was on a personal errand at the time of his injury on February 12, 1997. She concluded the employee had deviated from the route he would normally have taken, noting that, at the time of his injury, he had not returned to the direct route the business trip alone would have taken. (Finding10; Mem. at 4.) Relying on the Williams case, the compensation judge concluded the employee engaged in a severable side trip which placed the employee beyond the scope of the Workers' Compensation Act. Accordingly, the compensation judge concluded the employee's injury did not arise out of his employment and denied the claim for workers' compensation benefits. The employee contends the compensation judge's finding is clearly erroneous and unsupported by substantial evidence. He contends the trip to his home was necessitated by his employment because he needed his driver's license and the parking card to perform his job. The trip home, the employee asserts, was exclusively for a business purpose and in furtherance of the employer's objectives and was not, therefore, personal. Accordingly, the employee argues, he was acting within the course and scope of his employment and his injury is compensable. We are not persuaded.

In this case, the employee's trip home was necessary solely because of his own forgetfulness. The separate trip to retrieve his driver's license and parking card was not a specific work duty assigned by the employer. Ms. Lundeen testified that had the employee asked permission to go home to pick up his wallet she would have given permission only if the employee used vacation time to do so. Possession of his driver's license and parking card were primarily for the employee's own convenience. Any incidental benefit to the employer from the employee's trip home was minimal, at best. From the testimony, the compensation judge could reasonably conclude the employee's trip home was not expressly or impliedly permitted under the employee's employment contract and was not incidental to any work duty. Cf., Raymond v. Osseo/Brooklyn School Bus Co., 463 N.W.2d 510, 43 W.C.D. 510 (Minn. 1990). Had the employee remembered his billfold that morning, and slipped on the steps on the way to his car to drive to work, the usual commuting to and from work rule would clearly bar the employee's receipt of compensation benefits. See, Swanson, 439 N.W.2d 722, 41 W.C.D. 1010. A second commute to home and back to work necessitated by the employee's forgetfulness does not transform an otherwise noncompensable injury into a compensable one. We conclude the judge's decision is supported by substantial evidence and is legally correct.

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[4] The employee does not contend the "special errand" rule, another exception to the going and coming rule, is applicable in this case. See Youngberg v. Donlon Co., 119 N.W.2d 746, 22 W.C.D. 378 (Minn. 1963).

The parties did not cite nor have we found any Minnesota case addressing the compensability of a special trip home necessitated by the employee's own forgetfulness. Courts in other jurisdictions have, however, dealt with the issue, with conflicting outcomes. In Industrial Commission v. Harkrader, 52 Ohio App. 76, 3 N.E.2d 61 (1935) the employee, a teacher, was preparing for a Thanksgiving party at school and needed a large kettle for a fireplace staging. On the morning of the injury, the employee left her home driving towards school and realized she had forgotten the kettle. She returned home, secured the kettle and fell on her steps while exiting her home. The Ohio Appellate Court reversed an award for the employee concluding the steps at the employee's home did not constitute a hazard of employment because the employee had not yet reached the zone of employment when the accident happened. The court stated that to rule otherwise would be to easily circumvent the rule that injuries occurring while commuting to and from work are not compensable. In Stagliano v. New York Telephone Co., 172 A.D.2d 887, 568 N.Y.S.2d 476 (1991), the employee came to work wearing a shirt with language on it that his employer found offensive. The employee was given the option of turning the shirt inside out, purchasing another shirt or going home to change the shirt. The employee chose the latter and was injured while traveling from his home back to work. The court held that the fact that the employee "chose to go home does not qualify as an exception to the general rule that travel to and from work is not an incident of employment." The court concluded there was no causal relationship between the journey home and any work to be accomplished nor was there any other benefit to the employer, and denied compensation benefits. See also Milberg v. Behr-Manning Corp., 274 App. Div. 862, 82 N.Y.S.2d 16 (1948). In Everett Ford Co. v. Laney, 189 So.2d 877 (Fla. 1966) the employee, a bookkeeper, worked irregular hours and was given a key to the office. After a personal shopping trip, the employee returned to work but realized she had left the office key at home. While driving home to get the key the employee was injured. The court denied compensation stating there was no "reasonable foundation for the theory that the particular mission, a trip by an employee to get her key, was one incidental to her employment in any way other than all acts by which an employee prepares to go to work." Id. at 878. See also Maguires Case, 16 Mass. App. 337, 451 N.E.2d 446 (1983). The state of Louisiana, in contrast, awarded compensation in cases where the employee returned home to get his driver's license or returned home to get dry work boots. Gray v. Broadway, 146 So.2d 282 (La. Ct. App. 1962); Alexander v. Insurance Co. of the State of Pa., 131 So.2d 558 (La. Ct. App. 1961). In these two cases, the appellate court concluded a return trip home was naturally or incidentally related to the reasonable duties expressly or impliedly authorized by the employee's contract of employment. The court noted that acts necessary to the comfort or convenience of an employee while at work, although personal, are incidental to the service to the employer and an injury occurring while in the performance of such acts are compensable.

The greater weight of authority from other jurisdictions supports the result reached here by the compensation judge. More importantly, substantial evidence supports the compensation judge's determination that the employee was on a personal errand and had deviated from the normal business route, and his injury did not, therefore, arise out of or in the course of his employment. The compensation judge's findings and order are, accordingly, affirmed.