ATEF S. YACOUB, Employee/Appellant, v. AM. NAT'L INS. and CNA INS. CO., Employer-Insurer, and ST. PAUL FIRE & MARINE INS. CO., Intervenor.

WORKERS' COMPENSATION COURT OF APPEALS
JANUARY 12, 1999

No. [REDACTED SSN]

HEADNOTES

ARISING OUT OF & IN THE COURSE OF - PROHIBITED ACT. The employee, whose driver's license had been suspended for failure to pay fines, was injured in a work-related motor vehicle accident. Driving after suspension, although in violation of the employment contract, was not a "prohibited act" barring workers' compensation benefits where a direct causal nexus was lacking between the prohibited conduct and the injury, and the compensation judge erred in denying benefits on that basis.

Reversed and remanded.

Determined by Johnson, J., Wilson, J., and Wheeler, C.J.
Compensation Judge: Rolf G. Hagen

OPINION

THOMAS L. JOHNSON, Judge

The employee appeals from the compensation judge's denial of the employee's claim for workers' compensation benefits based upon a finding that at the time of the motor vehicle accident in which he was injured, the employee was engaged in a prohibited course of conduct. We reverse and remand the case to the compensation judge for further findings.

BACKGROUND

Atef S. Yacoub, the employee, was first employed by American National Insurance, the employer, in 1983 as an insurance agent. His job involved selling insurance products and collecting premiums. The employee was later promoted to sales manager until 1987 when he was transferred by the employer to another district as an insurance agent. (T. 43, 45.) In 1992, the employee left the employer to work with Franklin Life Insurance. The employee then went to work for Bankers Life & Casualty until 1996. (T. 45-47.)

The employee returned to work for the employer on July 18, 1996. On that date, the employee received and signed a Job Description & Drug Screen Acknowledgment Form. (Resp. Ex. 4; T. 124-25.) The exhibit described certain essential functions of the employee's job

as a home service (insurance) agent for the employer. One essential function required driving to homes or places of business of present or potential customers. Another essential function required an agent to have access to a properly licensed and insured automobile and have a current valid driver's license. Finally, the form required the employee meet the driving standards set forth in the Collective Bargaining Agreement between the employer and the union which represented home service agents. (Resp. Ex. 5; T. 125-126.) The employee acknowledged receiving the Collective Bargaining Agreement on July 18, 1996. (T. 126.) This document also required the employee to maintain, as a condition of employment, a current driver's license issued by the state in which he resided. The agreement further provided that any agent driving while under license suspension may be subject to immediate termination. (Resp. Ex. 5.) The employee knew he had to maintain a current driver's license to maintain his employment with the employer. (T. 124, 126-27.)

The employee received speeding tickets on July 31 and September 18, 1996. The employee failed to pay the fines for these tickets. (T. 103.) On October 30, 1996, the State of Minnesota, Department of Public Safety, sent a notice to the employee stating he had 30 days to pay the fines and costs or his license would be suspended effective December 2, 1996. (Resp. Ex. 1.) The notice was properly addressed to the employee but the employee contended he did not receive the notice. (T. 104.) The employee did not pay the fines. (T. 103.) The Department of Public Safety suspended the employee's license on December 2, 1996. (Resp. Ex. 1.)

On December 14, 1996, the employee was involved in a motor vehicle accident in Maplewood, Minnesota. The employee contended he was on his way home after a service call at the home of a policy holder at the time of the accident. The employer and insurer denied the accident arose out of and in the course of the employee's employment. The employee was given a ticket at the scene of the accident for driving after suspension. The employee did not tell his employer that he did not have a valid license at the time of the accident. (T. 123-24.) Some time after the accident, the employee's supervisor, Arthur Coates, asked the employee for a copy of the traffic accident report prepared by Officer Rossman of the Maplewood Police Department. The employee provided Mr. Coates with a copy of the first page of the report (See Resp. Ex. 2), but did not give him a copy of the second page. (Resp. Ex. 3; T. 113-114.) The second page states the employee was driving with a suspended driver's license and was issued a traffic citation.

The employee did not return to work for the employer after the December 14, 1996 car accident. In January 1997, Mr. Coates took the employee off the payroll of the employer. Six months later, the employer sent a form to the State of Minnesota advising the state the employee was off the payroll. (T. 183-84.) By letter dated July 9, 1997, the employee was advised that the employer had requested the Minnesota Insurance Department to cancel his appointment with the employer effective July 9, 1997. (Pet. Ex. O.)

The employee filed a claim petition on June 29, 1997 seeking temporary total disability benefits. The claim was later amended to include a claim for temporary partial disability benefits. St. Paul Fire & Marine Insurance Companies' request for intervention was

granted on November 7, 1997.[1] The case came on for hearing before a compensation judge at the Office of Administrative Hearings on May 29, 1998. In a findings and order served and filed July 1, 1998, the compensation judge found the possession of a valid driver's license was an essential function of the employee's job and a condition of employment, that the employee knew or should have known that he was not in possession of a valid driver's license on December 14, 1997, and that driving without a valid driver's license was a specifically prohibited course of conduct. Based on these findings, the compensation judge concluded the employee failed to prove the motor vehicle accident on December 14, 1996 occurred in the course of his employment with the employer. The employee appeals.

STANDARD OF REVIEW

"[A] decision which rests upon the application of a statute or rule to essentially undisputed facts generally involves a question of law which [the Workers' Compensation Court of Appeals] may consider de novo." Krovchuk v. Koch Oil Refinery, 48 W.C.D. 607, 608 (W.C.C.A.) 1993). Where facts are disputed, this court 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). Where evidence conflicts or more than one inference may reasonably be drawn from the evidence, the findings are to be affirmed. Hengemuhle v. Long Prairie Jaycees, 358 N.W.2d 54, 60, 37 W.C.D. 235, 240 (Minn. 1984). 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

The compensation judge concluded the employee engaged in a prohibited act when he drove without a valid driver's license on December 14, 1996, and denied the employee's claims for workers' compensation benefits. The employee argues the compensation judge erred as a matter of law in denying the employee's claims. We reverse the denial of benefits.

As a general rule, the negligent or intentional misconduct of an employee is not a defense to a claim for workers' compensation benefits. The defenses of contributory negligence and assumption of risk are barred in workers' compensation cases. Matheson v. Minneapolis St. Ry. Co., 126 Minn. 286, 148 N.W. 71 (1914). The basic test of coverage is the relationship of the injury to the employment, that is, whether the injury is one "arising out of and in the course of employment." Minn. Stat. § 176.011, subd. 16. This question is generally decided without reference to the fault or negligence of either party. There are, however, certain statutory and common law exceptions to the general rule. Minn. Stat. § 176.021, subd. 1, provides, "[i]f the injury was intentionally self-inflicted or the intoxication of the employee is the proximate cause of

[1] The intervenor sought reimbursement of medical expenses and no-fault benefits.

the injury, then the employer is not liable for compensation." A common law exception to the general rule is the so-called "prohibited act" doctrine. "Where an employer expressly prohibits the doing of a certain specific act, the disregard of which is not reasonably foreseeable to the employer, a violation thereof takes the employee outside the scope of his employment and injuries resulting therefrom are not compensable even though the act might be considered to be in furtherance of the employer's business." Bartley v. C-H Riding Stables, Inc., 296 Minn. 115, 206 N.W.2d 660, 26 W.C.D. 675 (1973). The principle underlying the doctrine is that an intentional violation of a specific order or prohibition of the employer may take the employee outside the scope of the employment. "There are prohibitions which limit the sphere of employment and prohibitions which only deal with conduct within the sphere of employment. A transgression of a prohibition of the latter class leaves the sphere of employment where it was, and consequently will not prevent the recovery of compensation. A transgression of the former class carries with it the result that the man has gone outside the sphere." Rautio v. International Harvester Co., 180 Minn. 400, 231 N.W. 214, 6 W.C.D. 213 (1936), citing Eugene Dietzen Co. v. Industrial Bd. of Ill., 297 Ill. 11, 116 N.E. 684 (Ill. 1917).

A denial of benefits under the prohibited act doctrine requires that there be a causal relationship between the prohibited conduct and the injury. This causal connection between the prohibited conduct and the injury is apparent in cases where benefits have been denied. In each of the cases cited below, the injury could not have occurred had the employee complied with the employer's order or prohibition. In Rautio, id., the employee entered a mine that he was expressly forbidden to enter and was killed in a cave in. In Anderson v. Russell-Miller Milling Co., 196 Minn. 358, 267 N.W. 501, 9 W.C.D. 125 (1936) the employee was asphyxiated by lethal gas in a mill that he had been specifically told not to enter. In Walsh v. Chas. Olson & Sons, Inc., 285 Minn. 260, 172 N.W.2d 745, 25 W.C.D. 42 (1969) the employee was specifically instructed not to use a particular machine on the employer's premises. The employee ignored the prohibition and was injured while using the machine. In Bartley, id., the employee was injured while attempting to ride a horse that he had been specifically instructed not to ride. In Brown v. Arrowhead Tree Serv., Inc., 332 N.W.2d 28, 35 W.C.D. 818 (Minn. 1983) the employee was injured while attempting to clear a tree from a power line right-of-way. The employee had been previously instructed by his supervisor to do nothing to that particular tree.

The compensation judge here found a current and valid driver's license was an essential function of the employee's job and a condition of his employment. The compensation judge further found the employee knew or should have known prior to December 14, 1996 that he was not in possession of a valid Minnesota driver's license. Substantial evidence supports these findings. Based on these findings, the compensation judge concluded that on December 14, 1996, the employee's operation of his car without a valid driver's license was a specifically prohibited course of conduct and denied benefits.

We reverse the denial of benefits because the requisite causal connection between the prohibited act and the injury is lacking. Granted, had the employee not driven his car on December 14, 1996, he would not have been involved in a car accident. There is, however, no reason to conclude the accident would not have happened if the employee had been driving with a

valid license. It was not the violation of the prohibition against driving without a valid license which resulted in the employee's injury. In the cases cited above, there existed a direct causal link between the performance of the prohibited act or prohibited conduct and the occurrence of the injury. In this case, that nexus is lacking. Accordingly, the prohibited act doctrine is not applicable.

The respondents argue that American National Insurance identified a legitimate and fundamental requirement of the employee's job: the possession of a valid Minnesota driver's license. The employer expressly precluded the employee from doing the job without satisfying this fundamental requirement. In violation of this clear instruction, the employee drove his car without a valid license. Accordingly, the appellant contends, it should be relieved from liability under the Workers' Compensation Act. We disagree. An employer may certainly identify fundamental job requirements with which an employee must comply in order to obtain and retain employment. An employer and employee may further, by contract, agree to certain rules with which an employee must comply as a condition of employment. A failure to comply with a fundamental requirement of the job or a breach of a contractual obligation may be grounds for termination of an employee or other sanctions by the employer. These issues, however, are a matter of employment law, not workers' compensation law. In workers' compensation cases, the sole inquiry is whether the injury arose out of and in the course of the employment. Violation of an employment contract is relevant only insofar as the performance of a prohibited act may take an employee outside the scope of the employment. In this case, driving without a valid license was not such an act.

The employee's act of driving without a valid license on December 14, 1996, was not a prohibited act that bars the employee from the receipt of workers' compensation benefits. Accordingly, we vacate Findings 13 and 14 and Orders 1 and 2. The case is remanded to the compensation judge to make further findings on the remaining issues set forth in the Statement of Issues in the compensation judge's findings and order of July 1, 1998. Such additional findings should be made on the existing record.