

DAI M. VU, Employee, v. WACONIA FORD MERCURY and MICH. PHYSICIANS MUT. LIAB., Employer-Insurer/Appellants, and JOHN DEER INS. CO. and PAIN ASSESSMENT REHAB. CTR., Intervenors.

WORKERS' COMPENSATION COURT OF APPEALS
SEPTEMBER 24, 2001

No. [REDACTED SSN]

HEADNOTES

ARISING OUT OF & IN THE COURSE OF - GOING TO AND FROM WORK. Where, at the time of his injury, the service-manager employee was not a passenger "being transported" passively in a vehicle furnished by the employer, was not riding in a vehicle essential to his normal job duties, and was not actively performing any material aspect of his job, neither the "regularly furnished transportation exception" under Minn. Stat. § 176.011, subd. 16, nor the "Gilbert exception" under case law applied, and the compensation judge erred as a matter of law in concluding that the employee's injury while driving home from work in his employer-owned vehicle was an injury arising out of and in the course of his employment, notwithstanding the fact that the employee was under obligation each day to have the company-owned vehicle back at the dealership with him for possible sale or errand purposes.

Reversed.

Determined by Pederson, J., Wheeler, C.J. and Rykken, J.
Compensation Judge: Rolf G. Hagen

OPINION

WILLIAM R. PEDERSON, Judge

The employer and insurer appeal from the compensation judge's conclusion that the employee's injuries arose out of and in the course of his employment. We reverse.¹

BACKGROUND

On January 15, 1999, Dai Vu was employed as a service manager with Waconia Ford Mercury [the employer], a job entailing supervision of vehicle servicing and repair, collection of payment for such work, and substantial computer processing. On that date, Mr. Vu [the employee] sustained multiple injuries to his back and other areas of his body when the employer-owned vehicle that he was driving home from work slid off the road in bad weather and rolled

¹ The employer and insurer appealed also from the judge's finding that the employee sustained permanent injuries as a result of the accident here at issue. Given our conclusion that that accident did not arise out of and in the course of the employee's employment, the permanency issue is moot.

over. On the date of his injuries, the employee was thirty-two years old and was earning a weekly wage of \$1,477.97. The employee's use of the company-owned vehicle in which he was injured was also part of his compensation for the work that he did for the employer, an option he evidently elected in lieu of additional pay. Although he had occasionally brought some of his work for the employer home, the employee was not in a habit of bringing work home regularly, and he was not in the process of doing so at the time of his accident on January 15, 1999. Nor was the employee at the time of his accident engaged in either a special errand of business or a dual purpose, business/personal, trip.

On March 1, 1999, the employee filed a claim petition, alleging entitlement to various medical and rehabilitation benefits, to penalties for a frivolous denial of his claim, and to intermittent temporary total and temporary partial disability benefits continuing from January 15, 1999, all consequent to a work-related injury on that date.² The employer and its insurer denied primary liability on grounds that the employee's injuries did not arise out of and in the course of his employment.

The matter came on for hearing on October 20, 2000. Issues at hearing were multiple, all stemming from the threshold issue of whether or not the employee's injuries on January 15, 1999, had arisen out of and in the course of his work for the employer.³ At the hearing, the employee testified in part that he was required to have his company-owned vehicle on the premises with him during the day, "for business purposes such as running parts, taking customers home, taking customers to work, loaning out when necessary." He testified that made such runs "[e]very day" in the course of his work for the employer. The employee testified also that the front license plate on his company vehicle identified the employer as the owner and that "that will in turn provide some sort of advertisement for the dealership by me driving that car." Dean Hilgers, one of two owners of the employer, testified that it was very unlikely that the employee's company vehicle would ever be used for parts-running, customer transporting, or loaning out, since there was a fleet of loaner vehicles available at the dealership for such purposes, each with a two-foot advertising placard on both the driver's door and the front passenger door. It was uncontroverted, however, that the vehicle at issue needed to be on the premises with the employee in order to be available for sale. By Findings and Order filed December 26, 2000, the compensation judge concluded that the injuries at issue had arisen out of and in the course of the employee's employment and accordingly awarded various benefits. The employer and insurer appeal.

STANDARD OF REVIEW

In reviewing cases 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

² The original claim petition as filed March 1, 1999, erroneously named John Deere Insurance, rather than Michigan Physicians Mutual Liability, as the employer's carrier against workers' compensation liability. This error was subsequently corrected.

³ See Minn. Stat. § 176.011, subd. 16 (in order to be compensable, a personal injury must be one "arising out of and in the course of employment").

(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, “[f]actfindings are clearly erroneous only if the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed.” Northern States Power Co. v. Lyon Food Prods., Inc., 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975). 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.” Id.

“[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 Refinery, 48 W.C.D. 607, 608 (W.C.C.A. 1993).

DECISION

In order to have occurred in the course and scope of an employee’s employment, a personal injury generally must have occurred during the regular hours of the employee’s work and on the normal premises of that work. See Voight v. Rettinger Transp., Inc., 306 N.W.2d 133, 136, 33 W.C.D. 625, 630 (Minn. 1981); Gibberd v. Control Data Corp., 424 N.W.2d 776, 780, 40 W.C.D. 1040, 1047 (Minn. 1988). Some latitude has been attributed this rule, to the extent, for instance, that an injury may be compensable if it has occurred in the course of normal ingress and egress to and from the place of work just before or just after normal work hours--say, in the course of proceeding to or from the employer’s parking lot just before or after work. See, e.g., Starrett v. Pier Foundry, 488 N.W.2d 273, 47 W.C.D.176 (Minn. 1992). However, as a general rule, an injury occurring during the employee’s actual travel between the employee’s home and the employee’s single work site is normally not compensable.⁴ See, e.g., Goff v. Farmers Union Accounting Serv., 308 Minn. 440, 241 N.W.2d 315, 28 W.C.D. 372 (1976); Lehn v. Kladt, 312 Minn. 557, 250 N.W.2d 846, 29 W.C.D. 347 (1977).

Several exceptions do exist to the “coming and going rule” that was addressed in Goff v. Farmers Union Accounting Serv., 308 Minn. 440, 241 N.W.2d 315, 28 W.C.D. 372 (1976), and Lehn v. Kladt, 312 Minn. 557, 250 N.W.2d 846, 29 W.C.D. 347 (1977). For instance, an employee whose actual work entails travel away from the employer’s premises is, in most circumstances, under continuous “portal-to-portal” workers’ compensation coverage from the time he leaves home until he returns. See Voight. Minnesota Statutes section 176.011, subdivision 16, establishes another exception, in providing in part that, “[w]here the employer regularly furnishe[s] transportation to employees to and from the place of employment, those employees are subject to

⁴ Travel between two work sites may be compensable, however. See Kahn v. State, Univ. of Minnesota, 289 N.W.2d 737, 32 W.C.D. 351 (Minn. 1980). The compensation judge in the present case found, without contest on appeal, that the employee was not traveling between work sites at the time of the injury at issue.

this chapter while being so transported.” Compensation under this exception is well established in a long line of cases stemming at least as far back as Wiest v. Bolduc, 178 Minn. 310, 227 N.W.48, 6 W.C.D. 70 (1929), in which the employee was compensated for injury sustained as a passenger in transportation furnished by the employer. Cited in Bonfig v. Megarry Brothers, Inc., 294 Minn. 180, 199 N.W.2d 796, 26 W.C.D. 321 (1972). Still another prominent exception to the “coming and going rule” was articulated by the supreme court in Gilbert v. Star Tribune, 480 N.W.2d 114, 46 W.C.D. 188 (Minn. 1992), in which a newspaper route delivery driver, who was required to use his own vehicle in the performance of his work, was compensated for injury sustained while driving that vehicle en route to picking up his papers at the employer’s paper depot.

The compensation judge in the case before us indicated in his memorandum that he believed that the Gilbert exception applied in this case to draw the employee’s off-premises injury into the course and scope of his employment. He reasoned that “the facts presented are a hybrid of the cases involving employer[-]provided versus employee[-]provided transportation”—i.e., cases in the Wiest line of decisions and cases in the Gilbert line of decisions. The employer and insurer contend that the judge erred as a matter of law in his determination, arguing that the employee’s injury occurred away from the employer’s premises and that neither the “Regularly Furnished Transportation exception” nor the “Gilbert exception” applies to bring that injury back into the course and scope of the employee’s work. We agree.

The employee maintained at hearing, and the compensation judge implied in his decision, that the fact that the employee’s corporate vehicle was the property of the employer rendered that vehicle “furnished transportation” under Minnesota Statutes section 176.011, subdivision 16. For compensability to exist, however, the statute requires not only that the transportation at issue be “furnished” by the employer but also that the injury at issue have occurred while the employee was “being . . . transported.” The implication of the statutory exception is that liability extends into the transporting vehicle only in circumstances where the employee has entrusted his safety to the employer and is then injured while he is thus passively in the employer’s care. See Bonfig v. Megarry Brothers, Inc., 294 Minn. 180, 199 N.W.2d 796, 26 W.C.D. 321 (1972); McConville v. City of St. Paul, 528 N.W.2d 230, 52 W.C.D. 258 (Minn. 1995). As the supreme court has indicated, “The legislature’s use of the passive verb form, ‘being so transported,’ militates against providing coverage in the more common situation where the employee is the active driver of an employer-owned vehicle, as a permissive use for his own convenience and not that of the employer.” Bonfig, 294 Minn. at 182-83, 199 N.W.2d at 798-99, 26 W.C.D. at 324. In the case here at issue, the employee was entirely autonomous in his use of the employer’s vehicle—that is, the vehicle that he was riding in was entirely under his own direction and control; he was not “being . . . transported” by the employer.

Nor may the facts in this case be made a “hybrid” with the facts in the Gilbert case, simply by the mere fact, as the employee has argued, that the employee had undertaken an obligation to have his corporate vehicle back at the dealership with him each day. In the Gilbert case, the employee’s injury was found to be in the course of his employment in that, although the employee was not being paid at the time he was injured, the vehicle in which he was injured was, by requirement of the employer, at least the premises of the employer—it was where the employee performed the normal duties of his job. In the present case, the employee’s injury occurred neither

during his normal working hours nor, as was more arguably the case in Gilbert, on the premises of the employer.

Nor are we persuaded by the judge's reasoning that, "[g]iven th[e] requirement" to have the vehicle back on the dealership lot every day, "the employee had only one of two options[—]namely, not driving the vehicle home or driving the vehicle to and from work making sure that it is on the dealership lot on a daily basis when the employee works." This reasoning appears to suggest an argument that the employee's trip at the time he was injured somehow "arose out of" his employment—that, indeed, it entailed an element of his work for the employer, thereby extending the premises of the employer to the vehicle in a way somehow analogous to the circumstances in Gilbert. Contrary to the case in Gilbert, however, the employee in the present case did not perform the principle tasks of his job in his vehicle, and we find any causal relationship between the employee's obligation to have the vehicle with him at work again the following morning and the work that he was actually employed to perform simply too remote to compel a holding of compensability. As he drove home the night of his injury, the employee was not performing any sort of vehicle delivery or any other service for the employer, any more than would be any other employee that night. The fact that the employee happened to be in an employer-owned vehicle was incidental only to his compensation for the work that he did, not to that actual work. The employee's use of the vehicle at issue was an elected compensation option, not a requirement of the job itself, as had been the case in Gilbert. Nor was the vehicle itself an implement essential to the employee's performance of his job, as was also the case in Gilbert.

This court has previously indicated, without correction by the supreme court, that, "even [where an] employee is considered a 'traveling employee,'⁵ it is not the intent of the workers' compensation law to afford unqualified 'portal to portal' protection to such employees in any and all circumstances." Voigt v. Bigelow & Sons Enters., Inc., 43 W.C.D. 430, 434 (W.C.C.A. 1990). In this case, where the employee was clearly not a "traveling employee" in the conventional sense of the word, we are compelled to conclude that the connection between the employee's essential work for the employer and his use of the employer's vehicle at the time of his injury was simply too remote to extend the employer's premises and the employee's work hours to the vehicle and moment in which the employee was injured. Therefore we reverse as a matter of law the compensation judge's conclusion to the contrary.

⁵ See Voight, reference above.