IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
(April 2000 Session)

TATUM CARTER v. WAL-MART STORES, INC.

Direct Appeal from the Chancery Court for Rutherford County
No. 97WC-248 Honorable Don R. Ash, Judge

No. M1999-01520-WC-R3-CV - Mailed - July 26, 2000
Filed - September 1, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. As discussed below, the panel has concluded the judgment of the trial court granting the appellee summary judgment should be reversed.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court Reversed.

KURTZ, WALTER C., SP. J., delivered the opinion of the court, in which BIRCH, J., and LOSER, SP. J., joined.

John D. Drake, Murfreesboro, Tennessee, for Appellant, Tatum Carter

Angela D. Sutherland and Jeffrey B. Kopet, Chattanooga, Tennessee, for Appellee, Wal-Mart Stores, Inc.

MEMORANDUM OPINION

This is an appeal by the employee challenging the correctness of the trial courts granting summary judgment for the employer. The trial judge correctly defined the issue before him as:

> Whether a claimant is entitled to workers' compensation benefits for an injury which occurred during a trip to the doctor's office that was necessitated by a previous compensable injury and occurred as the claimant was crossing the parking lot to enter the office.

The facts are undisputed.[1] The employee received medical treatment for a compensable injury, but continued working. The treating physician ordered an EMG test for possible carpal tunnel syndrome and referred her to Dr. Bradburn. The employer, Wal-Mart, made an appointment for her to see Dr. Bradburn on September 23, 1996 for the test. On that day, the employee first went to Wal-Mart to obtain a form to be signed upon completion of the EMG test. She then drove directly to Dr. Bradburn's office. After the test, she asked Dr. Bradburn to sign the form, but the doctor told her that Dr. Polk, the referring doctor, should sign it. She then drove to Dr. Polk's office. Dr. Polk thought that Dr. Bradburn should sign the form. On her return to Dr. Bradburn's office, a runaway van struck her as she crossed the street toward Dr. Bradburn's office from the parking lot. She was injured. Is that injury compensable under the workers' compensation act? On motion for summary judgment the trial judge answered the question in the negative.

Decisions granting summary judgment are not entitled to a presumption of correctness on appeal. An appellate court must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in the nonmoving parties favor. A summary judgment should be affirmed only if the undisputed facts and the conclusions reasonably drawn thereof support the conclusion that the moving party is entitled to a judgment as a matter of law. See Tenn. R. Civ. P. 56 and Byrd v. Hall, 847 S.W.2d 208 (Tenn. 1993).

Injuries "arising out of and in the course of employment" are covered by the workers' compensation law. See Tenn. Code Ann. § 50-6-102(a)(5). Tenn. Code Ann. § 50-6-204(a)(1) requires the employer to furnish to the employee such medical and surgical treatment "as may be

[1]The parties entered into a joint stipulation of material facts. The trial judge and both parties agreed that the issue was one of law.

reasonably required" by the compensable injury. Thus, the appellant argues, the injury received by the appellant, on a visit to the doctor at her employers direction for a prior on-the-job injury is compensable.

Not so says the appellee. This is not the kind of accident that could have reasonably been contemplated by the employer at the time of hiring and therefore this injury does not arise out of employment and is not compensable. The appellee correctly states that the employee must show both that the activity was "in the course of employment" and it is an injury "arising out of" employment. The phrase "arising out of" and "in the course of" are not synonymous. "Arising out of" refers to the origin of the injury, while "in the course of" refers to the time, place, and circumstances of the injury. See Lollar v. Wal-Mart Stores Inc., 767 S.W.2d 143, 144 (Tenn. 1989).

In determining the coverage of the Act the court applies the rule of construction in Tenn. Code Ann. § 50-6-116 that the Act be considered remedial and is to be constructed liberally in favor of claimants and that any reasonable doubt as to coverage should be resolved in favor of claimants. See Grump v. B&P Construction Co., 703 S.W.2d 140, 144 (Tenn. 1986)("we are required to construe the Workers' Compensation Law liberally in favor of the employee and in furtherance of the sound public policy that dictated the legislation") and Knox v. Batson, 399 S.W.2d 765, 772 (Tenn. 1966)(workers' compensation statutes are to be liberally construed and doubt as to whether the injuries arose out of or in the course of employment be resolved in favor of the employee").

The employer made the appointment for the employee to see the doctor for purposes of conducting the test. The employee drove to Wal-Mart to pick up the form and then to the doctor and then was injured when she was struck by a vehicle on her way back to Dr. Bradburn's office. At the time of her injury she was carrying out her employer's directive related to the employer's obligation

to furnish to the employee such medical treatment as may be reasonably required by her compensable injury. The court finds that this injury took place within the course of her employment. See Hudson v. Thurston Motors Lines, Inc., 583 S.W.2d 597, 599 (Tenn. 1979).

The second issue is whether this injury arose out of the appellant's employment. That, in turn, is related to a showing of (1) a causal connection between the employment and the injury or (2) a risk incidental to or particular to the employment. Thus, workers' compensation benefits are denied those injured by risk common to all members of the community. However, case law in Tennessee supports the conclusion that the risk to which this appellant was exposed comes within the so called "street risk" doctrine and is the kind of risk from which the workers' compensation law provides coverage. See Hall v. Mason Dixon Lines, Inc., 743 S.W.2d 148, 151 (Tenn. 1987) and Hudson v. Thurston Motor Lines, Inc., supra at 602 (injured in parking lot adjacent to street).[2] Tennessee has long held that if the employer requires the employee to be on the street, then an injury as a consequence of a street risk is one "arising out of" the employment.

Wal-Mart argues that this case is controlled by Jones v. Huey, 210 Tenn. 162, 357 S.W.2d 47 (Tenn. 1962). That case, however, is clearly distinguishable. In Huey the employee had suffered a employment related back injury and was at home recuperating. While at home the employee was killed in a tractor accident. His wife sought benefits contending that the use of the tractor was necessitated by the need for fire wood and that in turn the employee was unable to operate the tractor properly because of his disabling condition from the prior work related injury. The court in Huey

[2]Hudson contains a detailed discussion, without resolution, of the different approaches recognized by the courts and commentators in determining whether or not an injury arises out of the employment. Hudson supra at 599-600. Perhaps the cryptic label of "sufficient nexus" between the injury and employment is an appropriate expression of the rule to be applied on a case by case basis. Id. at 603.

found that the second injury was simply too attenuated and remote from the work related injury to be considered arising out of the employment. During the course of the decision, the Supreme Court contrasted the facts in Huey to the New York case of Goldberg v. 954 Marcy Corporation, 276 N.Y. 313, 12 N.E.2d 311 (1938) where compensation was allowed an injured employee during a trip to the doctor's office which was necessitated by a previous compensable injury. The court distinguished the Goldberg situation and pointed out that its holding differed from Huey in that in Goldberg "the fall occurred while the claimant, pursuant to the directions of her employer, was on her way to the doctor." Huey, Id. 210 Tenn. at 168. Inferentially Huey lends support to the appellants position.

Support for the appellant is also found in the "special errand rule." If an employee is sent on an assignment or mission at the direction of the employer and is injured during this errand it is usually found that this is within the course and scope of employment. This principle is illustrated in Stephens by Stephens v. Maxima Corporation, 774 S.W.2d 931 (Tenn. 1989). In Stephens the employee took the occasion of her lunch break to go home to pick up a questionnaire that the employer required her to complete. On the way back she was killed in an automobile accident. The court found that this accident was not within the "special errand rule" because the questionnaire could have been retrieved at any time. The court emphasized that "upon review of the record the evidence does not establish that her employer had instructed, directed, required, or even suggested that the employees return home to get the PDQ forms." Id. at 934. Thus, if as in this case, the employer had instructed, directed, or required that the employee make the trip, Stephens supports the contention that the accident would have arisen out of the employment relationship.

The case of Southern California Rapid Transit District Inc. v. Workers' Compensation

Appellate Board, 588 P.2d 806 (Cal. App. 1979) is illustrative of decisions from other jurisdictions which support this conclusion. The employee suffered a work related injury. Five months later while still off work he was injured in an automobile accident during a trip back home from his employer after delivering a required medical release which he had just obtained from his treating physician. He had been told to obtain the medical release as a condition of his returning to work. This second injury was compensable as a consequence of the prior injury. The court held that there was evidence to sustain a finding that the employee was within the "special mission" exception to the "coming and going" rule since he was on a business journey undertaken at the request of his employer.

Here, the facts are similar. The appointment with the doctor was made by the employer. The employer was under a duty to provide medical treatment. The form to be filled out was supplied by Wal-Mart to be provided at the conclusion of the medical test.

The California case cited above is consistent with the general rule.

> When an employee suffers an additional injury because of an accident in the course of a journey to a doctor's office occasioned by a compensable injury, the additional injuries are generally held compensable. If the journey takes place immediately after the first injury occurs, the chain of causation is most readily visible, as when an employee was being rushed to the hospital following a compensable injury and sustained further injury when the ambulance was involved in a collision. But, quite apart from the element of immediacy, a fall or automobile accident during a trip to a doctor's office has usually been considered sufficiently causally related to the employment by the mere fact that a work connected injury was the cause of the journey, without any necessity for showing that the first injury in some way contributed to the fall or accident.

Larson, Larson's Workers' Compensation Law § 10.07 [Accident During Trip To Doctor's Office](CD ROM 2000). See also Woodrum v. Premier Auto Glass Co., 660 N.E.2d 491 (Ohio

1995) and Immer and Company v. Brosnahan, 152 S.E.2d 254 (Va. App. 1967).[3]

The appellee cites several cases from other jurisdictions in support of the view that injuries received while on the way to receive medical treatment for a compensable injury are not compensable. The most recent of these cases is Bear v. Anson Implement Inc., 976 S.W.2d 553 (Mo. App. 1998). In Bear the employee had received a work related injury but had returned to work. On the day of the second injury he was released from work early in order to keep an appointment with his authorized physician. He attended the appointment and then drove home. On the way home he was in an automobile accident. The court determined that the employees' injury from the accident was not compensable. The court acknowledged that the "recognizable trend" supports a finding that the injury arose out of or was incurred in the course of employment. The court, however, was concerned about adhering to the rule of no compensability for driving to and from work. The court acknowledged that an injury on the way to the doctor might be compensable but not when the employee stopped for the appointment on his way home. The court recognized the general rule contained in Larson's Workers' Compensation Law:

> Furthermore, we have reviewed the current edition of Larson's and the cases cited in support of its statement that "when an employee suffers additional injuries because of an accident in the course of a journey to a doctor's office occasioned by a compensable injury, the additional injuries are generally held compensable." Larson's, Vol. 1 § 13.13 (1997). The facts of the majority of the cases cited for this proposition are for injuries incurred while the employee was traveling en route to the appointment, at the doctor's office, or traveling back to the workplace after the appointment was over. Thus, the causal link between the second accident to the employment was sufficient to find it compensable as arising out of and in course of employment.

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[3]Additional case law in a majority of other jurisdictions support coverage under like circumstances. See Annotation, Workers' Compensation: Compensability Of Injuries Incurred Traveling To Or From Medical Treatment Of Earlier Compensable Injury, 83 A.L.R.4th 110 (1991) and 82 Am.Jur.2d, Workers' Compensation §292 (1992).

Bear, Id. at 557 f4. The court found the employee in Bear to be outside the general rule, however, because the trip to the doctor was on the way home and incidental to the trip home after work. The decision did not preclude coverage under all circumstances as when the injury took place on a trip to the doctor. "A subsequent medical appointment for treatment of a prior work-related injury may fall within the scope and course of employment ... [but not] when injuries [were] received while traveling home from a medical appointment." Id. at 558. Bear does not support the broad contention argued by the appellee.

For the reasons expressed above the decision of the trial judge is reversed. This case is remanded to the Chancery Court of Rutherford County for further proceedings consistent with this decision. Costs are taxed to the appellee.

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellee, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM