IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 7, 2003 Session

ADANA CARTER v. UTICA MUTUAL INSURANCE COMPANY

Direct Appeal from the Chancery Court for Hamilton County
No. 00-1067 W. Frank Brown III, Chancellor

Filed August 27, 2003

No. E2002-01779-WC-R3-CV

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. The trial court sustained a motion for summary judgment in favor of the employer and held that the injury did not occur within the course of employment. The employee contends she was required to make the trip in question and was on a special mission and that the usual rule of noncompensability in going to or coming from work did not apply. The judgment is reversed as the injury occurred on the return trip which was a special errand or mission for the benefit of the employer.

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

THAYER, SP. J., delivered the opinion of the court, in which ANDERSON, J., and BYERS, SR. J., joined.

Bert Bates and Lynn Perry, of Cleveland, Tennessee, for Appellant, Adana Carter.

Michael D. Newton, of Chattanooga, Tennessee, for Appellee, Utica Mutual Insurance Company.

MEMORANDUM OPINION

The trial court dismissed the complaint by sustaining a motion for summary judgment in favor of the insurance carrier, Utica Mutual Insurance Company. The employee, Adana Carter, has appealed insisting her injury arose out of and in the course of her employment.

Undisputed Facts

The summary judgment record does not raise any questions of fact but presents a question of law. Adana Carter was employed by Medical Management Professionals as an accounts payroll clerk in Chattanooga, Tennessee. She was instructed by her supervisor to attend a one day seminar

in Atlanta, Georgia, on April 28, 2000. She was to be paid for an eight hour day while attending the seminar and was to be reimbursed for mileage. The seminar was to begin at 8:30 a.m. on April 28 which was a Friday and she was not to report to work until the following Monday morning. She was not given any instructions from her employer about when she should travel to Atlanta or when she should return to Chattanooga.

On the day in question, she had invited two friends who were not co-employees, to travel with her and they left in her vehicle around 6:00 a.m. They were traveling on Interstate 75 and as they were near the Marietta community, Ms. Carter's car began to overheat. She pulled off the roadway. After remaining stopped for adding water to the radiator and letting the car cool down, they continued on to Atlanta. The car overheated again and it was near 8:30 a.m. She then called officials at the seminar and was told that if she arrived more than thirty minutes late, she could not attend the seminar and would have to reschedule. She continued on attempting to make it in time.

Around 9:00 a.m. she realized she could not make it by the time she was instructed to be there and she and her friends stopped and had breakfast. After eating they spent some time driving around Atlanta and went to a mall. Later in the afternoon, they checked into a motel for the night. That evening they went to another mall and stayed until it closed. After the mall closed, they had a late dinner until near midnight. Then they went back to the motel. After some period of time, they decided to return to Chattanooga without spending the rest of the night. The record indicates they began their journey home around 3:00 a.m. About 4:26 a.m., an eighteen wheeler truck collided with the Carter vehicle causing the claim in question. At the time of the accident, one of the friends was driving and the employee was asleep. The employee was not paid any wages for April 28 and was not reimbursed for travel mileage.

At the trial below, the court found that at the time of the accident and injury, the employee was traveling from her place of employment to her home and that the general rule was an employee is not acting within the course of employment when the employee is going to or coming from work. The court noted that "the traveling employee exception" was not applicable as her employment did not involve extensive traveling and that her job site only changed for one day. The judgment went on to reflect that if the court was wrong in applying the general rule of noncompensability, the court would hold in the alternative that the employee's conduct was not reasonable observing that the employee and her two friends were too tired to operate a vehicle; that they should have got some sleep before returning home; and that the employee's "activities during the deviation increased the risk".

Standard of Review

An appeal from a summary judgment order in a workers' compensation case is not controlled by the *de novo* standard of review provided by the Workers' Compensation Act but is governed by Rule 56, Tenn. R. Civ. P. *Howard v. Cornerstone Med. Associates*, 54 S.W.3d 238 (Tenn. 2001); *Gonzales v. Alman Const. Co.*, 857 S.W.2d 42 (Tenn. 1993). Under Rule 56, a court must review the record without a presumption of correctness to determine whether the absence of genuine and

material factual issues entitle the moving party to a judgment as a matter of law. *Goodloe v. State*, 36 S.W.3d 62 (Tenn. 2001).

Analysis

The sole question on appeal is whether the employee was within the course of her employment when she was injured. A compensable workers' compensation injury must arise out of and occur in the course of employment. Tenn. Code Ann. § 50-6-102(12). The phrase "arising out of " refers to cause or origin and "in the course of" refers to time, place and circumstances. *Hill v. Eagle Bend Mfg., Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997). The general rule is that an employee is not acting within the course of employment when the employee is going to or coming from work unless the injury occurs on the employer's premises. *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143, 150 (Tenn. 1989). 1 A. Larson, The Law of Workmen's Compensation, §15.11 (1994).

Tennessee has recognized certain exceptions to the "going and coming" rule. One exception exists where the employee is considered to be a "traveling employee." *Pool v. Metric Constructors, Inc.*, 681 S.W.2d 543, 544 (Tenn. 1984); *McCann v. Hatchett*, 19 S.W.3d 218 (Tenn. 2000). A recent case considering this exception is *Howard v. Cornerstone Medical Associates*, 54 S.W.3d 238 (Tenn. 2001). The employee was a doctor who maintained an office practice and was also the medical director at two nursing homes. He traveled back and forth to these work sites. On the day in question he left his home and traveled to one of the nursing homes to see a new patient. He was involved in an accident before reaching the nursing home. The court held the doctor was not a "traveling employee" and that the general rule of noncompensability in going to work applied. It was stated that this exception to the general rule usually applies to employees who travel extensively to further the employer's business such as a traveling salesman. The travel is said to be an integral part of the job and differs from an ordinary commuter's travel thereby exposing the traveling employee to greater risks. The trial court found employee Carter was not a "traveling employee" and we concur with this conclusion.

The other recognized exception to the general rule is where the employee is considered to be on a "special errand or mission." This exception was recognized and considered in the case of Stephens by *Stephens v. Maxima Corporation*, 774 S.W.2d 931 (Tenn. 1989). Employee Stephens, a computer operator, was involved in a fatal automobile accident one mile from her place of employment when she was taking her lunch break and had gone home to retrieve an employment record which had to be turned in to her employer. In denying compensation and holding the "special errand or mission" exception did not apply, the court stated the evidence was not sufficient to show the employer had instructed, directed or even suggested that the employee return home to get the employment record and that such action on her part had been her decision. Thus, the court ruled the employee's death did not occur in the course of her employment.

In the *Stephens* case, the court also quoted Professor Larson:

> Upon review of the cases in which other jurisdictions have applied

> the special errand rule there is a common thread that the employee is usually injured while performing some special act, assignment or mission at the direction of the employer. *See* 1 Larson, Workmen's Compensation Law §16.11 n. 9 (1985).

In reviewing these authorities and applying the principles adopted therein to the facts of the present case, we are of the opinion the special errand or mission rule would have application. The employee's general work duties did not require any travel activities. On the day in question, she was required by her employer to attend the seminar in Atlanta thereby exposing her to risks she would not normally encounter in going to and coming from her work in Chattanooga. She was to be paid regular wages for attending the seminar and was to be reimbursed for mileage expenses. While attending, she would have been engaged in activities beneficial to her employer. However, her failure to attend the seminar was not as a result of her own personal decision or from circumstances which could be considered her fault. Her automobile malfunctioned and she could not attend because of this mechanical problem. Under these facts, we find and hold the usual going and coming rule has no application and that the employee was on a special errand or mission and that the trip to Atlanta was within the course of her employment.

The trial court was of the opinion that if the trip was within the course of her employment, the employee had deviated to such extent that her injury was not in the course of employment. We do not agree with this finding. Where the employee is engaged in travel which is not ordinarily within the scope of employment, the relationship of the accident to the injury is an essential point of inquiry, with the question being whether the employer exposed the employee to the risk. *Armstrong v. Liles Constr. Co.*, 389 S.W.2d 261 (Tenn. 1965). It is true that an unauthorized deviation may preclude recovery of compensation for an injury caused by an added peril to which the employee is thereby exposed during the period of the deviation. *See Underwood Typewriter Co. v. Sullivan*, 265 S.W.2d 549 (Tenn. 1954). However, the compensability of an injury occurring after the deviation has ended and the employee is again in the course of employment is not ordinarily affected by the deviation. *West Tennessee Nix-A-Mite Sys. Inc. v. Funderburk*, 346 S.W.2d 250 (Tenn. 1961).

In the case of *Watson v. United States Fire Insurance Company*, 577 S.W.2d 668 (Tenn. 1979), the employee was required to attend a training program at Paris Landing State Park. He worked in Knoxville and the day before the meeting left Oak Ridge and drove in his vehicle to Jackson, Tennessee, where he visited a friend and remained for the night. The next day he was involved in an accident while driving to the state park. The trial court denied compensation holding that the excursion to Jackson was a detour motivated solely by personal concerns and that such deviation resulted in the injury not being in the course of employment. The Supreme Court reversed the ruling and held the employee was engaged in a trip made necessary by the requirements of his employment and that his injury was compensable. The court observed that the employer had not given any instructions as to what route should be taken; the employer had no interest in the starting point of the trip and that the employee had every right to be in Jackson, Tennessee, the day before the meeting at the park.

We find the trip from Chattanooga to Atlanta was an employment mandated journey. There were no instructions to the employee as to when she should leave for Atlanta or when she was to return to Chattanooga. Her failure to attend the seminar was not because of her own personal choice but because officials at the seminar would not let her attend the meeting late. The accident occurred on the return trip to Chattanooga and not when she and her friends spent some time in Atlanta after missing the seminar. The trial court held her choice to return during the middle of the night was not reasonable. We disagree and find that there were no employment restraints on her time of travel.

Conclusion

We find the injury occurred during the course of employment. The judgment is reversed and the case is remanded to the trial court for determination of all other issues. Costs of the appeal are taxed to the employer.

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ROGER E. THAYER, SPECIAL JUDGE

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JUDGMENT

This case is before the Court upon Utica Mutual Insurance Company's motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B). 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 are incorporated herein by reference.

Whereupon, it appears to the Court that the motion for review is not well-taken and should be DENIED; 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 assessed to Utica Mutual Insurance Company for which execution may issue if necessary.

PER CURIAM

Anderson, J., not participating.