IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 22, 2007 Session

# SHARON P. ADAMS v. CITY OF KINGSPORT, TENNESSEE

**Direct Appeal from the Chancery Court for Washington County**
**No. C5306 G. Richard Johnson, Chancellor**

**Filed May 2, 2008**

**No. E2007-00630-WC-R3-WC- Mailed February 20, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Her job as a school psychologist required her to travel between schools and other sites in the City of Kingsport. She had gone to a restaurant for lunch after completing an assignment at an elementary school. She was injured in an automobile accident which occurred as she was leaving the parking lot of the restaurant. At the time, she was returning to her office to pick up materials for an assignment at a second school. The trial court granted Employer's motion for summary judgment, finding that Employee's injury did not arise from or occur in the course of her employment. Employee has appealed. We hold that Employer was not entitled to summary judgment, vacate the judgment, and remand the case to the trial court for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (2005 & Supp. 2007) Appeal as of Right; Judgment of the Chancery Court Reversed**

TELFORD E. FORGETY, SP. J., delivered the opinion of the court, in which GARY R. WADE, J. and BEN W. HOOPER, II, SP. J., joined.

Arthur M. Fowler and Arthur M. Fowler, III, Johnson City, Tennessee, for the appellant, Sharon P. Adams

Steven C. Rose and S. Curtis Rose, Kingsport, Tennessee, for the appellee, City of Kingsport

## MEMORANDUM OPINION

## Factual and Procedural Background

Sharon Adams ("Employee") was injured in an automobile accident which occurred on November 6, 2002. At the time of the accident, she was driving from a Shoney's Restaurant, where she had just eaten lunch, to her office at a building called the Palmer Center.

Employee was a school psychologist for the City of Kingsport ("Employer"). She shared an office at the Palmer Center with three other individuals. Most of her work was conducted on-site at various schools in Kingsport. She used her own automobile to travel between the Palmer Center and the schools, and received a mileage reimbursement for doing so.[1] She generally carried a notebook computer (provided by Employer), a beeper, psychological testing materials and student files in her car. She was not required to take any specified route from one work location to another.

On the day of the injury, Employee reported to work at the Palmer Center. She then went, in her vehicle, to Lincoln Elementary School for a meeting which lasted from 10:00 a.m. to 1:45 p.m. She had been assigned to conduct an "emergency evaluation" at a different school, Washington Elementary, that afternoon. In order to conduct that evaluation, she had to return to the Palmer Center to obtain some records before proceeding to the school. Before doing so, she went to lunch. Her affidavit states that she had an unspecified "dietary need" and that Shoney's Restaurant had a menu that was "suitable to [her] diet." She drove 0.7 miles past the Palmer Center in order to get there. The accident occurred after she had finished lunch and was en route to the Palmer Center.

Employer moved for summary judgment, contending that the injury did not arise from or occur in the course of Employee's work. The trial court granted the motion for summary judgment and dismissed the case. Employee has appealed, contending that the trial court erred in finding that her injury was not compensable under the workers' compensation law.

## Standard of Review

Rule 56 of the Tennessee Rules of Civil Procedure provides the applicable standard of review when a workers' compensation claim is decided on a party's motion for summary judgment. Downen v. Allstate Ins. Co., 811 S.W.2d 523, 524 (Tenn. 1991). A motion for summary judgment should be granted when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. See Tenn. R. Civ. P. 56.04; Penley v. Honda Motor Co., Ltd., 31 S.W.3d 181, 183 (Tenn. 2000); Byrd v. Hall, 847 S.W.2d 208, 211 (Tenn. 1993). The appellate court must review the evidence in a light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 89 (Tenn. 2000). The

1Employer states that Employee did not receive a mileage reimbursement for traveling to and from lunch.

standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 337 (Tenn. 2005).

**Analysis**

Employee's injury occurred while she was returning to her primary work site from an activity not related to her job, i.e., eating lunch. "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." Howard v. Cornerstone Medical Associates, P.C., 54 S.W.3d 238, 240 (Tenn. 2001). Employee contends that her injury falls within one of three exceptions to the general rule, and therefore arose out of and occurred in the course of her employment. First, she argues that she was a "traveling employee." In the alternative, she contends that her automobile was her workplace as an "extended office." Finally, she argues that Employer's premises is the entire City of Kingsport. Because we conclude that this case is governed by the "street risk doctrine" adopted in Hudson v. Thurston Motor Lines, Inc., 583 S.W.2d 597 (Tenn. 1979), we do not address those theories.

In Hudson, the employee was a "city driver." His duties were to pick up and deliver freight in the City of Nashville. He was dispatched to make a delivery at a particular location, and to pick up cargo at the same location to be returned to his employer's terminal. He made his delivery, and went to a nearby restaurant for lunch while waiting for his truck to be reloaded. There, he was attacked by unknown assailants and sustained severe injuries. The trial court found that his injuries did not arise from his employment, and denied benefits. The Supreme Court reversed and ordered that judgment be entered awarding benefits in accordance with the trial court's alternative finding.

In reaching its decision the Hudson Court noted that, although the employee "could eat when and where [he] might select, it was expected that [he] would take into consideration the convenience of the employer and its customers, as well as [his] own, in selecting the time and place for lunch." Id. at 598. Further, the Court found that the employee's selection of the particular restaurant "was for the mutual convenience and economy of the employer, its customer, and perhaps himself." Id. at 599. The Court then explicitly adopted the street risk rule, stating that "the risks of the street are the risks of the employment, if the employment requires the employee's use of the street." Id. at 602. In that context, the employee's injuries were found to arise from his employment. In Hall v. Mason Dixon Lines, Inc. 743 S.W.2d 148, 151 (Tenn.,1987), the Court elaborated on the breadth of the street risk doctrine: "Generally, street risks include simple falls, assaults by highway robbers and automobile accidents."

As in Hudson, Employee's job in this case required her to travel between her office, various schools and other locations within the city. Her affidavit, submitted in response to Employer's motion for summary judgment, stated that she "was required to travel almost daily and during any one day . . . would usually travel to three or more schools or other locations." She estimated that she spent 20% of her working hours at the Palmer Center, and the remainder

at the other locations. Concerning the lunch hour, she stated: "It was common practice for school psychologists such as myself to eat lunch in a school cafeteria, or especially when school cafeterias were closed, to eat lunch while traveling between locations." Accepting these statements as true, as we must for purposes of reviewing entry of summary judgment, leads to the conclusion that Employee's job required her to be driving on the streets of Kingsport on the day of her accident and that her choice of a place to have lunch was for the mutual convenience of her employer and herself. On that basis, the facts in this case would align squarely with those in Hudson, and her injuries would arise from her employment.

Howard is distinguishable because the employee in that case was injured while traveling from his home to a work site. He was on the public roads for the purpose of getting to his job. In contrast, Employee in this case had commenced her work day and was placed on the public roads in order to carry out her job. On the basis of the foregoing, we conclude that the trial court erred in granting Employer's motion for summary judgment.

**Conclusion**

The judgment of the trial court is vacated. The case is remanded for further proceedings consistent with this opinion. Costs are taxed to the City of Kingsport.

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TELFORD E. FORGETY, SPECIAL JUDGE

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**No. E2007-00630-SC-WCM-WC**

**ORDER**

The City of Kingsport has filed a motion seeking reconsideration of this Court's dismissal of its motion for review of the Appeals Panel's decision. The time for filing the motion for full Court review expired on March 6, 2008. The City's motion for review was filed on March 10, 2008. Accordingly, the motion for review was dismissed as untimely.

In its motion to reconsider, the City of Kingsport maintains that the motion for review was mailed prior to the deadline of March 6, 2008, and that the City is at a loss to explain why the motion did not reach the Clerk's Office until March 10, 2008. The City also contends that it mailed the motion with the understanding after discussion with the Clerk's Office that the date of mailing would be considered the date of filing. Finally, the City asserts that the opposing side has not been prejudiced by the untimeliness of the motion. Regardless of the reasons for the untimely filing, however, this Court is without jurisdiction to consider the merits of the motion. Young v. Nashville Elec. Serv., 142 S.W.3d 292 (Tenn. 2004). Accordingly, the motion to reconsider the dismissal is denied.

PER CURIAM