IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2008 Session

VELMA LYNN SAUNDERS MANUEL v. DAVIDSON TRANSIT ORGANIZATION

Direct Appeal from the Chancery Court for Sumner County
No. 2006C-148 Tom E. Gray, Chancellor

No. M2007-01580-CV-R3-WC - Mailed - July 30, 2008
Filed - September 24, 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. The employee, Velma Lynn Saunders Manuel, was injured in an automobile accident which occurred as she was returning to her home from receiving medical treatment for a compensable work injury. She sought benefits for the additional injury. Her employer, Davidson Transit Organization, denied the claim. The trial court ruled that the additional injury arose from and in the course of the employment, and awarded 28% permanent partial disability to the body as a whole. On appeal, the employer contends that the trial court erred by finding the injury to be compensable. We affirm the judgment.

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

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ALLEN W. WALLACE, SR. J., joined.

David M. Drobny, Nashville, Tennessee, for the appellant, Davidson Transit Organization.

David E. High and Peter D. Heil, Nashville, Tennessee for the appellee, Velma Lynn Saunders Manuel.

MEMORANDUM OPINION

FACTUAL AND PROCEDURAL BACKGROUND

The facts relevant to the appeal are not disputed. Ms. Manuel was employed by Davidson Transit Authority. She had a compensable injury in May 2005. On December 8, 2005, she attended

a physical therapy appointment in Goodlettsville for treatment of that injury. She was temporarily totally disabled at the time. After the physical therapy appointment was completed, she left the facility driving her own vehicle. She went to a Walgreen's pharmacy, which was apparently nearby, to pick up some prescription medication. That medication was prescribed as part of a pain management program she had participated in since 2004, made necessary by low-back fusion surgery that was not work-related. After she obtained the medication through the drive-through window, she left Walgreen's and was proceeding along the route she would have used to return to her home. She apparently fell asleep while driving, causing her vehicle to run off of the road. She sustained an injury to her neck as a result of that event. The trial court determined that the "street risk" doctrine applied, found the injury to be compensable, and awarded 28% permanent partial disability. Judgment was entered accordingly. Davidson Transit has appealed, arguing that the trial court erred in finding that Ms. Manuel's injury arose from and occurred in the course of her employment.

STANDARD OF REVIEW

Where, as here, there is no conflict in the evidence as to any material fact, the questions on appeal are entirely of law. Lawrence County Educ. Ass'n v. Lawrence County Bd. of Educ., 244 S.W.3d 302, 309 (Tenn. 2007); Billington v. Crowder, 553 S.W.2d 590, 595 (Tenn. Ct. App. 1977). Questions of law are reviewed de novo upon the record with no presumption of correctness. Ridings v. Ralph M. Parsons Co., 914 S.W.2d 79, 80 (Tenn. 1996).

ANALYSIS

Compensability is the only issue raised on appeal. Davidson Transit contends that the trial court should have applied the "coming and going" rule, which would require a finding that the injury was not compensable. That rule is set out in Howard v. Cornerstone Med. Assoc., P.C., 54 S.W.3d 238, 240 (Tenn. 2001), as follows: "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." In Howard, the injured employee was traveling from his home to a designated work location when the injury occurred. Because he was on his way to work, he was held not to be in the course of his employment. Ms. Manuel was not working at the time the injury occurred. In fact, she was no longer employed by Davidson Transit. She had been terminated as a result of missing eighteen of thirty-six months of work due to this and other injuries. Davidson Transit analogizes this situation to an employee commuting to and from her job. Their argument is that if she had been injured on the premises of the facility where she received treatment, her injury would be compensable. Because her therapy had been completed and she was returning home, Davidson Transit contends the situation should be viewed the same as if she had completed a day of work.

Ms. Manuel argues that the trial court correctly applied the "street risk" doctrine which is an exception to the "coming and going" rule. The "street risk" rule was formulated by the Tennessee Supreme Court in Hudson v. Thurston Motor Lines, Inc., 583 S.W.2d 597 (Tenn. 1979), and provides 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 Hudson, the employee was a truck driver. He had commenced his work day and had made a delivery. While waiting for his truck to be loaded, he ate lunch at a nearby restaurant. He was shot by unknown assailants while re-entering his truck after lunch. The Supreme Court held that being assaulted was a "street risk" of Mr. Hudson's employment and, therefore, the injury arose out of that employment. Ms. Manuel contends that she was on the street for the purpose of receiving treatment for her work-related injury, and, therefore, her injury was similarly the result of her employment.

The issue is whether Howard or Hudson is controlling in the case before us. In Stephens v. Maxima Corp., 774 S.W.2d 931 (Tenn. 1989), the Tennessee Supreme Court recognized the "special errand rule" exception to the "coming and going" rule set forth in Howard. Under the "special errand rule" exception, an employee may be compensated for an off-premises injury "while performing some special act, assignment or mission at the direction of the employer." Id. at 934. Thus, 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 to be within the course and scope of employment. Id.

In Carter v. Wal-Mart Stores, Inc., No. M1999-01520-WC-R3-CV, 2000 WL 1234402 (Tenn. Workers' Comp. Panel Sept. 1, 2000) a special workers' compensation panel was confronted with a situation similar to that before us. In that case, an employee was injured by an automobile while in the parking lot of the office of a doctor who provided medical treatment for a work-related injury. The trial court granted summary judgment to the employer, on the ground that the injury did not arise from or occur in the course of the employee's employment. Id. at *1. The workers' compensation panel reversed relying, in part, upon Hudson, id. at *2, and also the "special errand rule," recognized in Stephens, id. at *3. The Carter panel undertook an examination of cases from other jurisdictions, as well as Professor Larsen's treatise, and concluded that the majority rule was that injuries which occur while traveling to and from authorized medical treatment are compensable. Id. As stated by the panel in Carter:

> 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. (citing 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); Immer & Co. v. Brosnahan, 152 S.E.2d 254 (Va. App. 1967).

Id. at *3 -4.

We find the reasoning of the panel in Carter to be persuasive and, therefore, reach the same conclusion. We agree that traveling to and from authorized medical treatment for a compensable injury should be considered a "special errand" connected with the employee's employment that subjects the employee to the "street risks" inherent in such travel. It is consistent with the purpose of the workers' compensation law to deem these injuries to arise out of and in the course of the employment. See, Hubble v. Dyer Nursing Home, 188 S.W.3d 525, 535 (Tenn. 2006). The fact that Ms. Manuel was no longer employed by Davidson Transit does not, in our view, alter the rationale for application of the special errand rule. Her need for medical treatment was a direct result of a compensable injury and, thus, was a partial continuation of the employment relationship. We, therefore, conclude that the trial court did not err by finding that her additional injury arose from and in the course of her employment.

CONCLUSION

The judgment of the trial court is affirmed. Costs are taxed to Davidson Transit Organization, and its surety, for which execution may issue if necessary.

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DONALD P. HARRIS, SENIOR JUDGE

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VELMA LYNN SAUNDERS-MANUAL v. DAVIDSON TRANSIT ORGANIZATION

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ORDER

This case is before the Court upon the motion for review filed by Davidson Transit Organization 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.

It appears to the Court that the motion for review is not well taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Davidson Transit Organization and its surety, for which execution may issue if necessary.

PER CURIAM

CORNELIA A. CLARK, J., not participating.