IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
JUNE 19, 2017 SESSION HEARD AT MEMPHIS

MELISSA DUCK v. COX OIL COMPANY, ET AL.

Appeal from the Court of Workers' Compensation Claims
No. 2015-07-0089 Allen Phillips, Judge

No. W2016-02261-SC-WCM-WC – Mailed September 19, 2017;
Filed November 21, 2017

The employee in this case worked as a clerk at a convenience store. While at work, the employee orally informed her supervisor that she was quitting and turned to leave the store. On her way out of the store, the employee fell. She later complained of injuries from the fall and sought workers' compensation benefits. The employer denied the claim on the basis that the employment relationship had already ended by the time the injury occurred. The Court of Workers' Compensation Claims awarded benefits. The Workers' Compensation Appeals Board reversed and remanded. The employer then filed a motion for summary judgment, which was granted. The employee appealed to the Supreme Court pursuant to Tennessee Code Annotated section 50-6-239(c)(7) (2014), and the Supreme Court referred the appeal to the Special Workers' Compensation Appeals Panel pursuant to Tennessee Supreme Court Rule 51. We hold that the appeal is not barred by the law of the case doctrine and that the employee remained employed at the time the alleged injury occurred for a reasonable length of time to effectuate the termination of her employment, so she was still employed for purposes of the workers' compensation statutes. Accordingly, we reverse and remand for further proceedings.

Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right;
Judgment of the Court of Workers Compensation Claims Reversed and Remanded

HOLLY KIRBY, J., delivered the opinion of the court, in which JAMES F. RUSSELL, J. and RHYNETTE N. HURD, J., joined.

Charles L. Holliday, Jackson, Tennessee, for the appellant, Melissa Duck.

Anne T. McKnight, Michael W. Jones and Fred J. Bissinger, Nashville, Tennessee, for

the appellees, Cox Oil Company, and Technology Insurance Company.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts are undisputed. Melissa Duck ("Employee") worked as a clerk at a convenience store operated by Cox Oil Company ("Employer"). On March 22, 2015, Employee clocked in for work at 2 p.m. At the time, her immediate supervisor, Jason Stanford, was in the process of defrosting and cleaning an ice cream freezer. Mr. Stanford asked Employee to work the main cash register while he finished cleaning the freezer. She told him that she did not want to work the cash register. Mr. Stanford then asked Employee to instead finish cleaning the ice cream freezer while he worked the main register. Employee refused to do that either.

Employee then began gathering her belongings from the front counter. Mr. Stanford asked her if she was leaving, and Employee answered "yes." When Mr. Stanford asked Employee if she was quitting, she responded "yes!" and turned to exit the store. As Employee was leaving, she immediately slipped and fell in a puddle of water on the floor; the puddle was next to the ice cream freezer that she had just refused to clean. Employee later claimed that, right away, she felt pain in her low back, her left arm and shoulder, and in the back of her head.

Employee never reported to work again after that. She later stated in an affidavit that she sent a text message to the store's manager, Jake Flowers, to inform him that she "had quit." Mr. Flowers denied receiving such a text message.

On April 13, 2015, Employee went to the emergency department of Humboldt General Hospital because she "was still in pain and having headaches." On May 19, 2015, Employee filed a Petition for Benefit Determination with the Tennessee Division of Workers' Compensation. Three weeks later, Employer's insurer notified Employee that it was denying her claim because "there is no injury in the course and scope of employment."

Employee then filed a Request for Expedited Hearing regarding medical benefits. She asked for a ruling based on a review of the file without an evidentiary hearing, as the parties did not contest the facts of the case.

The Court of Workers' Compensation Claims heard the case based solely on the

available affidavits and records. The issue presented was whether Employee was likely to prevail at trial on the merits of her assertion that her injury occurred in the course and scope of her employment. Employee needed a determination in her favor in order to receive benefits pending the trial. Employer contended that Employee had not sustained a compensable work-related injury because she terminated her employment prior to her fall. The trial court adopted Employee's position, that she remained in the course and scope of her employment for a reasonable period of time to exit the premises at the end of her employment. It issued an expedited order on December 11, 2015, granting Employee's request for medical benefits.

Employer filed an interlocutory appeal to the Workers' Compensation Appeals Board. The Appeals Board reversed, concluding that the injury did not arise from the employment because the employment relationship ended before the Employee fell. The claim was remanded for further proceedings.

Once the case was back in the Court of Workers' Compensation Claims, Employer filed a motion for summary judgment. The motion contended that Employee's resignation, immediately prior to her fall, terminated the employment relationship and rendered her injury non-compensable. Finding no disputed material facts, the Court of Workers' Compensation Claims granted Employer's summary judgment motion based on the legal conclusion of the Appeals Board, that there was no employment relationship by the time the alleged injury occurred.

Employee then appealed to the Tennessee Supreme Court pursuant to Tennessee Code Annotated section 50-6-239(c)(7). The Supreme Court referred the appeal to this Panel pursuant to Tennessee Supreme Court Rule 51, section 1.

STANDARD OF REVIEW

This appeal arises out of the trial court's grant of summary judgment, so we review the trial court's decision de novo with no presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015) (citing *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997)); *Parker v. Holiday Hospitality Franchising*, 446 S.W.3d 341, 346 (Tenn. 2014). Summary judgment should be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04; *Bryant v. Bryant*, No. M201402379SCR11CV, 2017 WL 1404388, at *3 (Tenn. Apr. 19, 2017). Conversely, summary judgment should not be granted when there are genuine disputes of material fact. *Rye*, 477 S.W.3d at 264–65; *Parker*, 446 S.W.3d at 346. In the instant case, the material facts are not disputed. We are presented with only questions of

law, which are reviewed de novo, affording no deference to the decisions of the lower courts. *See Rye*, 477 S.W.3d at 250.

ANALYSIS

Law of the Case Doctrine

Initially, Employer asserts that the law of the case doctrine requires this Panel to affirm the grant of summary judgment in favor of Employer. Employer argues that the holding of the Workers' Compensation Appeals Board—that Employee's injury did not arise from her employment because the employment relationship ended before she fell—was not appealed prior to the remand to the Court of Workers' Compensation Claims, so that holding now binds this Panel. We disagree.

"[U]nder the law of the case doctrine, an appellate court's decision on an issue of law is binding in later trials and appeals of the same case if the facts on the second trial or appeal are substantially the same as the facts in the first trial or appeal." *Memphis Pub. Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998). "[I]t is a longstanding discretionary rule of judicial practice which is based on the common sense recognition that issues previously litigated and decided by a court of competent jurisdiction ordinarily need not be revisited." *Id.* The doctrine "promotes the finality and efficiency of the judicial process, avoids indefinite relitigation of the same issue, fosters consistent results in the same litigation, and assures the obedience of lower courts to the decisions of appellate courts." *Id*.

"While the doctrine of the law of the case can be a useful tool for the sake of judicial economy and consistency, the doctrine is neither a constitutional mandate nor a

limitation on this Court's power." *State v. Hall*, 461 S.W.3d 469, 500 (Tenn. 2015)[1]; *Arizona v. California*, 460 U.S. 605, 618 (1983) ("Law of the case directs a court's discretion, it does not limit the tribunal's power."); *Culbertson v. Culbertson*, 455 S.W.3d 107, 130 (Tenn. Ct. App. 2014). It is merely a practice to guide the courts. *Creech v. Addington*, 281 S.W.3d 363, 383 (Tenn. 2009). Thus, while the law of the case doctrine is a useful tool, we do not allow it to insulate an issue from review and bind a higher court in reviewing decisions from the lower courts that have not yet been passed upon. *See Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 817 (1988) ("Just as a district court's adherence to law of the case cannot insulate an issue from appellate review, a court of appeals' adherence to the law of the case cannot insulate an issue from

[1] In *State v. Hall*, the Supreme Court exercised its discretion to review the sufficiency of the evidence even though the circumstances did not qualify for review under any of the three recognized exceptions to the law of the case doctrine. *Hall*, 461 S.W.3d at 500. The exceptions were listed by the Supreme Court in *State v. Carter*:

> [A]n issue decided in a prior appeal may be reconsidered if:
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> (1) the evidence offered at the hearing on remand was substantially different from the evidence at the first proceeding;
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> (2) the prior ruling was clearly erroneous and would result in a manifest injustice if allowed to stand; or
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> (3) the prior decision is contrary to a change in the controlling law occurring between the first and second appeal.

State v. Carter, 114 S.W.3d 895, 902 (Tenn. 2003).

this Court's review."); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) ("[A]lthough . . . the interlocutory decision may have been treated as settling 'the law of the case' so as to furnish the rule for the guidance of the referee, the district court, and the court of appeals itself upon the second appeal, this court, in now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings."). Thus, we disagree with Employer's assertion that the law of the case as determined by the Workers' Compensation Appeals Board requires us to affirm the grant of summary judgment without reviewing the question of law presented. We proceed to address the substantive issue presented in this appeal.

Injury in the Course and Scope of Employment

Next we must determine whether Employee's injury, which occurred immediately after she announced that she was quitting, arose in the course and scope of her employment. This presents an issue of first impression in Tennessee.

Tennessee's Workers' Compensation law provides: "Every employer and employee subject to this chapter, shall, respectively, pay and accept compensation for personal injury or death by accident arising primarily out of and in the course and scope of employment without regard to fault as a cause of the injury or death." Tenn. Code Ann. § 50-6-103(a) (2014). Because the injury in this case occurred after July 1, 2014, we do not construe the Workers' Compensation statutes remedially or liberally. Rather, we construe the statutes fairly, impartially, and in a manner that favors neither the employee nor the employer. Tenn. Code Ann. § 50-6-116 (2014).

The facts here are straightforward. Employee clocked in for her shift. When her supervisor asked her to work the cash register while he cleaned the ice cream freezer, Employee refused. When the supervisor asked Employee to instead clean the ice cream freezer while he worked the cash register, she refused that as well. When the supervisor asked Employee if she was quitting, she replied, "yes!" Employee then gathered her belongings and began walking toward the door to exit the store. She promptly slipped in a puddle of water on the floor next to the ice cream freezer that her supervisor had been cleaning. Employee fell to the floor and claims that she sustained injuries in the fall.

Even though there are no Tennessee cases that address the precise issue in this case, for background, we briefly review case law involving injuries to current employees that occurred outside of their fixed time and place for work and whether those injuries occurred within the course of employment. In *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989), the Supreme Court rejected its previous general rule that injuries sustained by an employee *en route* to or from work were not compensable. *Id.* at

144, 150. In doing so, the Court aligned with the majority rule in holding that "a worker who is on the employer's premises coming to or going from the actual work place is acting in the course of employment." *Id.* at 150. In *Carter v. Volunteer Apparel, Inc.*, 833 S.W.2d 492 (Tenn. 1992), the Supreme Court found compensable an employee's injury that occurred in a slip-and-fall accident in the employer's break room nearly an hour before her shift began. *Id.* at 493, 496. The Court in *Carter* stated: "It is obvious that 'in the course of employment' for employees having a fixed time and place to work, embraces a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts." *Id.* at 494 (citing 1A Larson, *Workmen's Compensation Law* § 21.60(a) (1990)); *see also McCurry v. Container Corp. of Am.*, 982 S.W.2d 841, 845 (Tenn. 1998) ("In cases where an employee is injured while *en route* to or from work, the injury is in the course of employment if it occurs on the employer's premises or on a necessary route between the work facility and the areas provided for employee parking.").

In a case involving the Utah workers' compensation statutes, the United States Supreme Court stated the general principle that employment includes the time necessary to pass to and from the workplace:

> [E]mployment includes not only the actual doing of the work, but a reasonable margin of time and space necessary to be used in passing to and from the place where the work is to be done. If the employee be injured while passing, with the express or implied consent of the employer, to or from his work by a way over the employer's premises, or over those of another in such proximity and relation as to be in practical effect a part of the employer's premises, the injury is one arising out of and in the course of the employment as much as though it had happened while the employee was engaged in his work at the place of its performance.

Bountiful Brick Co. v. Giles, 276 U.S. 154, 158 (1928).

Because this case presents an issue of first impression, we reviewed how the question has been decided in other jurisdictions. From our review, the great majority extend to terminated employees the general principle that an injury sustained by an employee while arriving and leaving the employer's premises is compensable. These jurisdictions generally hold that, because leaving the workplace is incidental to the employment relationship, a terminated employee who "sustains injuries while leaving the premises within a reasonable time after termination" of the employment is deemed to have suffered a compensable injury. *Price v. R & A Sales*, 773 N.E.2d 873, 876-77 (Ind. Ct. App. 2002); *see also Ventura v. Albertson's Inc.*, 856 P.2d 35, 38 (Colo. App. 1992) ("Injuries sustained by an employee while . . . leaving the premises . . . within a

reasonable time after termination of a work shift are within the course of employment, since these are normal incidents of the employment relation."); *Ardoin v. Cleco Power*, 38 So. 3d 264, 266 (La. 2010) ("the few cases dealing with a terminated employee seeking workers' compensation benefits have been addressed by extrapolating from situations dealing with employees injured on the employer's premises before or after work"). "Following termination, the employer should be responsible for 'safely conducting the employee from his bench to a place where he becomes again a part of the general public.'" *Price*, 773 N.E.2d at 877 (quoting *Forman v. Chrysler Corp.*, 2 N.E.2d 806, 806 (Ind. App. 1936)).

This is consistent with the approach taken in Professor Larson's *Workers' Compensation Law*: "Injuries incurred by an employee while leaving the premises, collecting pay, or getting his clothing or tools within a reasonable time after termination of the employment are within the course of employment, since they are normal incidents of the employment relation." 2 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* 26-1 (2008). "Compensation coverage is not automatically and instantaneously terminated by the firing or quitting of the employee. The employee is deemed to be within the course of employment for a reasonable period while winding up his or her affairs and leaving the premises. The difficult question is: what is a reasonable period?" *Id.* § 26.01.

In a case with facts similar to the facts in the case at bar, the Oregon Court of Appeals affirmed workers' compensation coverage for the employee. In *Liberty Northwest Ins. Corp. v. Rodriguez*, 776 P.2d 588 (Or. Ct. App. 1989), the employee sustained injuries when he slipped and fell in the employer's parking lot as he was leaving the premises. The employee had just been fired and had gathered his belongings to exit the workplace. *Id*. at 588. The Oregon court upheld the decision of the workers' compensation board, which had relied on Professor Larson's "reasonable time" rule as stated above. *Id.* (quoting 1A Larson, *Workmen's Compensation Law* 5-285 § 26.10); *cf. Case of Larocque*, 582 N.E.2d 959, 960 (Mass. App. Ct. 1991) (coverage denied when claimant's heart attack occurred at home two weeks after his termination from employment).

Many of our sister states "extend[] workers' compensation benefits to employees who sustain injuries while leaving or returning to their employers' premises to wind up their affairs within a reasonable time after termination." *Case of Larocque*, 582 N.E.2d at 960; *see Cook v. AFC Enters., Inc.*, 826 So. 2d 174, 178 (Ala. 2002) (terminated employee's injuries were compensable because "her employment included a 'reasonable time, space, and opportunity' for her to leave the premises before the Workers' Compensation Act was rendered inapplicable"). *See, e.g., Johnson v. Safreed*, 273 S.W.2d 545, 547 (Ark. 1954) (terminated employee's injuries compensable because

"period between discharge and injury must be somewhat longer than the minute, or less, involved in the instant case"); *Mitchell v. Hizer*, 73 Cal. App. 3d 499, 507 (1977) (discharged employees who sustained injuries when they returned to the job site to collect their tools were still employees for the purpose of workers' compensation coverage because they had a "reasonable time after termination within which to secure the tools of trade which they provided"); *Hill v. Gregg, Gibson & Gregg, Inc.*, 260 So. 2d 193, 195 (Fla. 1973) ("Discharged employees have a reasonable time in which to leave their former employer's premises in safety. Injuries incurred during that time are compensable."); *Woodward v. St. Joseph's Hospital of Atlanta, Inc.*, 288 S.E.2d 10, 11 (Ga. App. 1981) (employee's injuries received from discharging supervisor subsequent to termination of employment found compensable); *Ardoin*, 38 So. 3d at 266 (La. 2010) (followed the "reasonable time" rule in affirming coverage for an employee terminated from employment at a distant worksite on Friday and who sustained injuries in a slip and fall accident while he was retrieving his personal effects from his office on the following Monday); *Nails v. Mkt. Tire Co., Inc.*, 347 A.2d 564, 567-68 (Md. Ct. Spec. App. 1975) (employee's injuries arose out of and in the course of his employment even though they occurred two days after he was discharged); *Zygmuntowicz v. American Steel & Wire Co.*, 134 N.E. 385, 387 (Mass. 1922) (holding that injurious assault upon employee that occurred immediately after his discharge occurred in the course of his employment); *Jones v. Jay Truck Driver Training Center, Inc.*, 736 S.W.2d 468, 469-70 (Mo. Ct. App. 1987) (discharge of an employee is intrinsic to the employment relationship and employee is allowed a reasonable time to finish up his affairs with regard to that relationship); *Leonhardt Enters. v. Houseman*, 562 P.2d 515, 518-19 (Okla. 1977) (workers' compensation coverage does not terminate instantaneously when employee quits or is fired; rather, employee is held to be within the course of employment for a reasonable period while he finishes up his affairs and leaves the premises); *Marazas v. Workers' Comp. Appeal Bd. (Vitas Healthcare Corp.)*, 97 A.3d 854, 863 (Pa. Commw. Ct. 2014) (employee's injury incurred after he quit work was compensable because it occurred on employer's premises and on employee's last day of employment, within a reasonable time of being required to be on the premises); *Anderson v. Hotel Cataract*, 17 N.W.2d 913, 917 (S.D. 1945) (holding that "an employee who quits remains in the course of his employment until afforded a reasonable opportunity to leave the employer's premises"); *Claims of Naylor*, 723 P.2d 1237, 1241 (Wyo. 1986) (recognizing the general rule that "an employee has a reasonable period of time after quitting or being fired in which to finish his business" and "[i]njuries incurred during this period of time may entitle an employee to worker's compensation").

A few jurisdictions apply an immediate termination approach, under which workers' compensation coverage terminates immediately when an employee quits or is fired. *See, e.g.*, *Johnson v. City of Albia*, 212 N.W. 419, 420, 423 (Iowa 1927) (compensation denied to an employee who returned to the job site the day after quitting

work to retrieve his tools and was injured while helping his successor operate equipment); *Fanders v. Riverside Resort & Casino, Inc.*, 245 P.3d 1159, 1162 (Nev. 2010) (once an employee quits or is fired, an injury sustained while leaving the job site generally is not in the course of employment). However, some jurisdictions that ostensibly follow the immediate termination approach have adopted exceptions, such as when the employee is subject to hazards inherent in the employment while leaving the workplace. *See, e.g., Sanders v. Texas Employers Ins. Ass'n*, 775 S.W.2d 762, 763-64 (Tex. App. 1989) (once employee has resigned or is fired, an injury incurred at the job site or while leaving the job site is not an injury sustained in the course of employment when termination occurs in a "place of safety and the employee is not subject to inherent hazards arising from the employment itself"); *Pederson & Voechting v. Kromrey*, 231 N.W. 267, 268-69 (Wis. 1930) (employment relationship terminates when the employee quits work or upon his discharge by the employer, but employee may be covered if he is injured "while rendering service under a contract of hire or while going to and from his employment in the ordinary and usual way while on the premises of his employer").

The instant case involves facts that are arguably not sympathetic to the claimant, who clocked in for her shift only to refuse to perform the duties of her position, quit her job, and then promptly slipped on a puddle of water next to the ice cream freezer she had refused to service. Under these facts, one might be tempted to adopt the "immediate termination" approach. However, we recognize that the termination of an employee's employment, whether the employee quits or is fired, can take place in a variety of circumstances. It is noteworthy that, of the few jurisdictions that have adopted the immediate termination approach, some find themselves adopting various exceptions, such as for employees who work in a dangerous environment.

Taking into account all of these considerations, we decline to follow the minority approach terminating compensation coverage immediately upon the employee quitting or being fired. Instead, we adopt the majority approach and hold that an employee whose employment is terminated remains covered by the Workers' Compensation statutes for a reasonable period of time for the employee to effectuate the termination of employment, such as by gathering belongings and exiting the workplace. This holding is a natural extension of the Tennessee cases cited above, holding that injuries incurred before an employee's work shift begins or after it ends may be compensable. *Lollar*, 767 S.W.2d at 150; *Carter*, 833 S.W.2d at 496.

In this case, we hold that Employee remained covered by the Workers' Compensation statutes during the time that she was leaving the work site, because the injury occurred within a reasonable time after termination of her employment and because walking to the door of the convenience store to exit the workplace was a normal incident of the employment relation. We do not undertake to describe the outer limits of

the reasonable interval during which the employment relationship persists after an employee quits or is fired; we simply hold that it was not exceeded in this case. *See, e.g.*, *Gunthrop-Warren Printing Co. v. Industrial Commission*, 384 N.E.2d 1318, 1321 (Ill. 1979).

CONCLUSION

The final order of the Court of Workers' Compensation Claims is reversed, and the case is remanded to that court for further proceedings consistent with this Opinion. Costs are taxed to Cox Oil Company, and Technology Insurance Company, for which execution may issue if necessary.

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HOLLY KIRBY, JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

MELISSA DUCK v. COX OIL COMPANY, ET AL.

Court of Workers' Compensation Claims
No. 2015-07-0089

No. W2016-02261-SC-WCM-WC – Filed November 21, 2017

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Cox Oil Company and Technology Insurance Company pursuant to Tennessee Code Annotated section 50-6-225(a)(5)(A)(ii) (2014), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's 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 taxed to Cox Oil Company and Technology Insurance Company, for which execution may issue if necessary.

In accordance with Supreme Court Rule 4(A)(3), the Court hereby orders publication of the Panel's Opinion.

PER CURIAM

Kirby, J., not participating