

STATE OF MICHIGAN
COURT OF APPEALS

CLIFFORD O. RICKS,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED

October 19, 2001

No. 230278

WCAC

LC No. 97-000805

Before: Murphy, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

This case is on remand from our Supreme Court for consideration as on leave granted. 463 Mich 888 (2000). Plaintiff appeals from the decision of the Worker's Compensation Appellate Commission (WCAC) that affirmed the magistrate's decision denying benefits to plaintiff. We affirm the WCAC.

Plaintiff began his employment with defendant in 1986 as a lighting technician. About two years later, he was transferred to a position in the grounds department. His position in the grounds department involved mowing grass, patching black top lots, moving salt bags weighing up to eighty pounds, and moving furniture. His regular working hours were 7:00 a.m. to 3:00 p.m., with a half-hour lunch break from 11:30 a.m. to 12:00 p.m., and he was paid for his lunch break. Although plaintiff was required to punch in and out on a time clock, he was not required to do so for his lunch break.

On the day of plaintiff's injury, September 20, 1996, he was assigned to go with Willie Davison to the Manoogian office building to move furniture out of an office for a new professor. In order to perform the job, Davison and plaintiff were assigned a truck owned by defendant and Davison was the driver of the truck. After completing the job, just before 11:30 a.m., Davison and plaintiff left Manoogian in the truck to return to the grounds shop and take their lunch break. Before going to the shop, Davison wanted to go to a McDonald's restaurant to buy his lunch. Davison drove on Woodward Avenue and was stopped at a traffic light when the truck was struck in the rear. The truck spun around in the middle of the intersection and plaintiff struck his head and twisted his neck and back. It is undisputed that Davison and plaintiff were off defendant's campus and on a public street during their lunch break when the accident occurred. Following medical treatment, a doctor placed certain restrictions on plaintiff, and plaintiff's supervisor would not allow him to return to work with the restrictions. Plaintiff has not returned to his job in the grounds department since the date of the injury.

Defendant contended that plaintiff's injury did not arise out of and in the course of his employment. The magistrate, following a hearing in October 1997, found that plaintiff was not entitled to worker's compensation benefits because the injury did not arise out of and in the course of his employment. The magistrate specifically found that plaintiff was injured off premises and during his lunch break, and thus the injury was not compensable because it was of a purely personal nature. Plaintiff then appealed to the WCAC. The WCAC affirmed the magistrate, specifically finding that the magistrate's decision was supported by competent, material, and substantial evidence on the whole record.

We review the decision of the WCAC to ensure that the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 703; 614 NW2d 607 (2000). As long as the WCAC did not misapprehend its administrative appellate role and as long as there exists any evidence in the record supporting the WCAC's decision, then we must treat the WCAC's factual decision as conclusive. *Id.* at 703-704. While the findings of fact made by the WCAC, acting within its powers and in the absence of fraud, are conclusive, we are empowered to review any question of law involved in any final order of the WCAC. MCL 418.861a(14). Questions of law are reviewed de novo. *Oxley v Dep't of Military Affairs*, 460 Mich 536, 541; 597 NW2d 89 (1999). The role of the WCAC, on the other hand, is to review the whole record, analyze the evidence presented, and determine whether the magistrate's decision is supported by competent, material, and substantial evidence on the whole record. *Mudel, supra* at 699.

The question in this case is whether plaintiff was injured "arising out of and in the course of employment." MCL 418.301(1). In this regard, MCL 418.301(3) provides:

An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131.

This "going-and-coming" provision also governs the resolution of lunchtime travel cases. *Simkins v General Motors Corp (After Remand)*, 453 Mich 703, 721; 556 NW2d 839 (1996). In *Simkins, supra* at 723, the Court specifically held:

[W]hen an employee is going to work or coming from work, an injury that occurs on property not owned, leased, or maintained by [the] employer is in the course of employment only if the employee is traveling in a reasonably direct route between the parking area owned, leased, or maintained by the employer and the worksite itself, unless the injury falls into one of the recognized exceptions. In such circumstances, the place of the injury, although not on property owned, leased, or maintained by the employer, is deemed to be on the employer's "premises" for purposes of the statute. . . . However, we hold that there is no recovery for an employee who is injured on a public street or other property not owned, leased, or maintained by the employer while traveling to or from a nonemployer parking lot because this injury is not in the course of employment.

The exceptions to allow an award of worker's compensation when the employee is otherwise off premises that have been recognized are where: (1) the employee is on a special mission for the employer; (2) the employer derives a special benefit from the employee's activity at the time of the injury; (3) the employer paid for or furnished the employee with transportation as part of the contract of employment; (4) the travel comprised a dual purpose combining the employment-required business needs with the personal activity of the employee; (5) the employment subjected the employee to excessive exposure of a common risk, such as traffic risks; and (6) the travel took place as the result of a split-shift working schedule or employment requiring a similar irregular nonfixed working schedule. *Camburn v Northwest School Dist*, 459 Mich 471, 478; 592 NW2d 46 (1999).

The magistrate relied on *McClure v General Motors Corp (On Rehearing)*, 408 Mich 191, 209; 289 NW2d 631 (1980), a plurality decision in which the Court held generally that the off-premises lunchtime automobile accidents resulting in the plaintiffs' injuries did not arise out of and in the course of their employment and, thus, were not compensable. The more recent rule, set forth in *Simkins*, garnered a majority of the justices and specifically acknowledged that *McClure* was relevant because the going-and-coming provision governs the resolution of lunchtime travel cases. See *Simkins, supra* at 717-721.

In any event, the WCAC, in affirming the magistrate's reliance on *McClure*, also relied on a somewhat different analysis in affirming the magistrate. The WCAC noted the "deviation" rule set forth in *Thomas v Certified Refrigeration, Inc*, 392 Mich 623; 221 NW2d 378 (1974). Generally, an employee who is injured while going to or coming from work cannot recover worker's compensation benefits. *Id.* at 631, n 3; accord *Camburn, supra* at 478; *Simkins, supra* at 712. However, as noted in *Camburn, supra* at 478, exceptions include situations where the employee is on a special mission for the employer or the employer furnished the transportation; situations that could apply to the present case. In *Thomas*, the Court dealt with whether an employee would be entitled to worker's compensation benefits when injured during a deviation from the otherwise employer-authorized trip away from the premises. The Court in *Thomas, supra* at 635, stated:

An authorized but totally private excursion such as using the company vehicle for weekend personal errands certainly is not covered because such trips lack a dual purpose . . . or "a sufficient nexus between the employment and the injury". . . . If a personal business detour is so great that the deviation dwarfs the business portion of the trip, it no longer can be said that it is "a circumstance of [the] employment". . . . This Court will not attempt to fix any formula, but in any case the nature of the deviation must be balanced against the clarity of authorization and effect of the activity on the employment relationship or the interests of the employer.

This rule was reaffirmed in *Bush v Parmenter, Forsythe, Rude & Dethmers*, 413 Mich 444; 320 NW2d 858 (1982).

The critical facts in the present case are that plaintiff and Davison went to the Manoogian building in a vehicle owned and furnished by defendant to move furniture. When they completed this job, it was plaintiff's lunch break. Plaintiff and Davison left the building in defendant's vehicle and Davison proceeded southbound on Woodward (in the opposite direction

they would have traveled from the Manoogian building to the grounds shop) and they were about ten blocks south of defendant's campus on a public street when the accident occurred. The magistrate specifically rejected plaintiff's contention that he had no choice but to be with Davison, the driver, because plaintiff's supervisor testified that plaintiff was not obligated to stay with the driver during the lunch break and that plaintiff was permitted to go anywhere during his lunch break.

The WCAC concluded that the magistrate's decision was supported by competent, material, and substantial evidence on the whole record and affirmed the magistrate's conclusion that plaintiff was on a personal errand unrelated to his employment. In reviewing the WCAC's decision, we conclude that the WCAC did not misapprehend its administrative appellate role and there is evidence in the record supporting the WCAC's decision. Moreover, the WCAC properly applied the deviation rule; therefore, it did not commit an error of law. Consequently, the decision of the WCAC affirming the magistrate's decision that plaintiff's injury did not arise out of and in the course of his employment is affirmed.

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder