[Cite as *Cossin v. Ohio State Home Servs., Inc.*, 2012-Ohio-5664.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ron Cossin,	:	
Plaintiff-Appellant,	:	
		No. 12AP-132
v.	:	(C.P.C. No. 10CVD-09-13457)
Ohio State Home Services, Inc. et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on December 4, 2012

Malek and Malek, and *Douglas C. Malek*, for appellant.

Andrew and Wyatt LLC, *Thomas Wyatt* and *Jerry P. Cline*, for appellee Ohio State Home Services, Inc.

Michael DeWine, Attorney General, and *Kevin J. Reis*, for appellee Administrator, Ohio Bureau of Workers' Compensation.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Ron Cossin ("claimant"), appeals from a summary judgment of the Franklin County Court of Common Pleas finding that he was not entitled to worker's compensation benefits for injuries he suffered in a February 18, 2008 automobile accident. On the date of the accident, claimant was an employee of defendant-appellee Ohio State Homes Services, Inc. ("OSHS"). The Administrator of the Ohio Bureau of Workers' Compensation ("BWC") is also a defendant-appellee in this appeal.

{¶ 2} The trial court determined that reasonable minds could only find that there was no causal connection between claimant's injuries and his employment. For the

following reasons, we find that the trial court erred in granting summary judgment to OSHS and BWC, and we reverse and remand the case for further proceedings.

I. FACTS AND PROCEDURAL HISTORY

{¶ 3} OSHS does business as EverDry Waterproofing of Columbus. The company maintains an office in Hilliard and provides basement waterproofing services to homeowners. In 2003, OSHS employed claimant as a sales consultant to conduct on-site evaluations of the basements of homeowners, make presentations to them as to waterproofing services OSHS could provide, and execute sales contracts for those services.

{¶ 4} Claimant testified that he worked varied hours as a sales consultant; that either the company would call him on his cell phone at approximately 8:00 a.m., or he would call in at that time to find out his schedule for the day; and that he might be scheduled for appointments at the homes of homeowners as late as 8:00 p.m. He testified that he was not required to regularly appear at the employer's workplace, although he might be scheduled to report there on a given day. He stated that OSHS would schedule him "in and out of [the office] as they wanted you" (Cossin depo. at 41), and that it was not "set in stone where you were going to be." (Cossin depo. at 80.) He testified that, if he made a sale in the evening, it was a "good idea to get the paperwork in" that same night by dropping it off at the Hilliard office. (Cossin depo. at 40.) But, if it was late, he would sometimes go directly to his home and deliver the paperwork to the office the next day.

{¶ 5} Similarly, a 30-year OSHS employee and manager, Kenneth Barnette, testified that claimant, as a sales consultant, did not have office space in OSHS's Hilliard office. Rather, OSHS generally advised its consultants by telephone of upcoming appointments scheduled at the homes of potential customers. The official testified that sales consultants came to the office to pick up and drop off paperwork, but they spent 90 percent of their time driving to appointments at the homes of potential customers. He testified that sales consultants were not required to report to work every morning because "their assignments can be received or gotten the day before; they can be given an assignment over the phone." (Barnette depo. at 59.) He further testified that a sales consultant's duties included "[g]oing out to people's homes and giving them a free inspection on their foundation." (Barnette depo. at 24.)

{¶ 6} On the day of the accident, claimant made a scheduled visit to a homeowner in Canal Winchester at noon, and a second visit to a homeowner in Columbus at 2:00 p.m. The company had scheduled claimant to make a third visit on that day between 6:00 and 8:00 p.m. at a residence in Marion.

{¶ 7} Claimant's motor vehicle accident occurred when he was returning to his home on the south side of Columbus at the conclusion of the sales presentation in Marion. He left the Marion home in his personal vehicle, a Ford Ranger truck, and drove south on Route 23 towards Columbus. The weather and road conditions deteriorated due to wintry conditions as he approached the Columbus I-270 outerbelt. Claimant testified that he entered the outerbelt on the north side of Columbus and traveled west and then south on I-270. As he approached the Hilliard/Cemetery Road exit, which is located approximately one and one-half miles from the EverDry office, claimant decided to proceed towards his home without stopping at the office. After he passed the exit ramp to Cemetery Road, a truck entered I-270 on the south side of the interchange, causing a vehicle in front of claimant to begin skidding. Claimant applied his brakes and lost control of his truck, which began to spin, and ultimately hit a guardrail. The truck sustained damage to its right front, side, and rear. Claimant testified that he hit his head in the accident. Later that evening, claimant went to the emergency room of a local hospital for evaluation and treatment.

{¶ 8} On February 21, 2008, claimant filed an application for workers' compensation benefits. On March 14, 2008, the BWC denied his claim. On March 24, 2008, claimant filed an administrative appeal with the Industrial Commission of Ohio ("commission"). On June 11, 2008, a commission district hearing officer ("DHO") denied claimant's application for benefits.

{¶ 9} The DHO noted that the emergency room physician had diagnosed the following: "1. Acute closed head injury status post motor vehicle accident. 2. Decreased vision, left eye. 3. Elevated blood pressure. 4. Right temporomandibular joint contusion." (June 11, 2008 DHO order, at 2.) But the DHO relied on the report of another doctor, Dr. Sherman, who had examined claimant and found that claimant "did not sustain an injury in the course of and arising out of his employment." Dr. Sherman concluded in a report of March 11, 2008, that the "physical examination findings noted in the 02/18/2008

emergency room report from Doctors Hospital do not support that the injured worker suffered from a closed head injury or a right tempomandibular joint contusion." (June 11, 2008 DHO order, at 1.) The DHO further found claimant to be "not credible or persuasive at the hearing" as there were multiple inconsistencies contained in the claim file and adduced at hearing concerning the extent of claimant's alleged injuries. (June 11, 2008 DHO order, at 1.) The DHO did not discuss, nor express any opinion, as to whether claimant's accident occurred during the course of his employment or whether his alleged injuries arose out of his employment.

{¶ 10} On July 18, 2008, a staff hearing officer ("SHO") issued an order also concluding that the claimant had "not met his burden of proving a compensable injury occurred." The SHO therefore affirmed the order of the DHO denying the claim. Similar to the DHO, the SHO did not discuss whether claimant's motor vehicle accident occurred while claimant was in the course of his employment or whether his injuries, if any, arose out of his employment.

{¶ 11} Claimant filed an action in the Franklin County Court of Common Pleas, as authorized by R.C. 4123.512, asserting that he had a right to participate in the Workers' Compensation Fund. The parties then engaged in discovery, including depositions of both claimant and Barnette.

{¶ 12} On September 16, 2011, OSHS and BWC filed motions seeking summary judgment denying claimant's application for workers' compensation benefits. OSHS cited the "well established 'coming-and-going rule' " and asserted that claimant "was not in the course of his employment when his injuries occurred, and his injuries did not arise from his employment." (OSHS's Motion for Summary Judgment, at 2.) Similarly, BWC asserted that the claim was "barred by the 'coming-and-going' rule, which states that injuries that occur during travel to and from the work place are not 'received in the course of and arising out of the injured worker's employment.' " (BWC's Joint Motion for Summary Judgment, at 1.) In contrast to the commission's hearing officers, neither movant raised issues concerning whether claimant had, in fact, suffered injuries in the February 18, 2008 accident, or the extent of those injuries.

{¶ 13} On September 29, 2011, claimant filed a motion seeking leave to file his own cross-motion for summary judgment. Claimant asserted that the only issue in dispute at

that time was whether claimant was a fixed-situs employee and, therefore, subject to the coming-and-going rule. He claimed that the relevant facts were not in dispute and that the evidence showed that claimant had, at a minimum, sustained a laceration or a contusion. He asserted that those facts demonstrated that he was entitled to workers' compensation benefits for, at a minimum, a laceration or a contusion. He argued that he had not been a fixed-situs employee, but, even if he were, he nevertheless sustained his injury in the course of, and arising out of, his employment.

{¶ 14} On February 8, 2012, the trial court entered summary judgment finding that claimant was not entitled to participate in the Workers' Compensation Fund. The court concluded that "[t]here is no causal connection between his injury and his employment; he was simply involved in a car accident while he was driving home at the end of the workday." (Trial court decision at 5.)

{¶ 15} The case is now before us for resolution.

II. LEGAL ANALYIS

{¶ 16} Claimant raises four assignments of error, which are summarized below:

> (1) The trial court erred in finding there was no causal connection between the claimant's injury and his employment.
>
> (2) The trial court erred in finding that Ohio State Home Services received no cognizable benefit from claimant's injuries.
>
> (3) The trial court failed to address whether claimant was a fixed-situs employee and thus whether claimant was subject to the "coming-and-going" rule.
>
> (4) The trial court erred in finding that the traveling employee doctrine did not apply to claimant.

{¶ 17} All of these assignments of error are relevant to the issue of whether claimant's injuries occurred in the course of, and arising out of, his employment and, taken together, challenge the trial court's disposition of the summary judgment motions. We will therefore address claimant's assignments of error together.

{¶ 18} "Appellate review of summary-judgment motions is de novo." *Capella III, L.L.C. v. Wilcox*, 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Andersen*

v. Highland House Co., 93 Ohio St.3d 547, 548 (2001). "De novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." *Holt v. State*, 10th Dist. No. 10AP-214, 2010-Ohio-6529, ¶ 9 (internal citations omitted). Summary judgment is appropriate where "the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made." *Capella III* at ¶ 16, citing *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6. The foregoing standards of review apply in workers' compensation actions filed pursuant to R.C. 4123.512. *See Jones v. USF Holland, Inc.*, 10th Dist. No. 10AP-537, 2011-Ohio-2368; *Phelps v. Dispatch Printing Co.*, 10th Dist. No. 09AP-1118, 2010-Ohio-2423, ¶ 5-6. Therefore, we undertake an independent review in this case to determine whether appellees were entitled to judgment as a matter of law.

{¶ 19} We observe initially that the parties are in agreement concerning the basic operative facts as stated above.

{¶ 20} Pursuant to R.C. 4123.01(C), " '[i]njury' includes any injury, whether caused by external accidental means or accidental in character and result, *received in the course of, and arising out of, the injured employee's employment*." (Emphasis added.) Accordingly, a worker in Ohio is entitled to participate in the Workers' Compensation Fund where a " 'causal connection" existed between an employee's injury and his employment either through the activities, the conditions or the environment of the employment.' " *Lippolt v. Hague, Inc.*, 10th Dist. No. 08AP-140, 2008-Ohio-5070, ¶ 10, quoting *Bralley v. Daugherty*, 61 Ohio St.2d 302, 303 (1980). The trial court granted summary judgment that claimant's injuries were not compensable based solely on its conclusion that claimant's alleged injuries were not causally connected to his employment.

{¶ 21} The Supreme Court of Ohio has expressly recognized the conjunctive nature of the statutory coverage formula provided by R.C. 4123.01(C). That is, a claimant's injuries must have both (1) been sustained "in the course of" employment and (2) "arisen out of" employment. *Fisher v. Mayfield*, 49 Ohio St.3d 275, 277 (1990). In reviewing de novo the case before us, we must liberally construe that statutory provision

in favor of claimant. *See* R.C. 4123.95 ("Sections 4123.01 to 4123.94, inclusive, of the Revised Code shall be liberally construed in favor of employees and the dependents of deceased employees.").

{¶ 22} Courts have developed judicial doctrines to aid in determining whether an injury occurred "in the course of, and arising out of, employment." The parties have discussed one of those rules, the "coming-and-going" rule extensively in this case. As summarized in *Lippolt*, that rule generally provides that:

> "[A]n employee with a fixed place of employment, who is injured while traveling to or from his place of employment, is not entitled to participate in the Workers' Compensation Fund because the requisite causal connection between the injury and the employment does not exist." *MTD Prods., Inc. v. Robatin* (1991), 61 Ohio St.3d 66, 68, 572 N.E.2d 661, citing *Bralley* [*v. Daugherty*, 61 Ohio St.2d 302, 303, (1980)]. The rationale for the rule is that the workers' compensation statutes contemplate only hazards encountered in the discharge of employment duties and not hazards or risks, such as travel to and from the place of employment, that the general public similarly encounters. *Ruckman* [*v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117 (1998),] at 119, 689 N.E.2d 917, citing *Indus. Comm. v. Baker* (1933), 127 Ohio St. 345, 188 N.E. 560, paragraph four of the syllabus.

Lippolt at ¶ 11.

{¶ 23} In *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117 (1998), Justice Cook, writing for the majority, concluded that the "coming-and-going rule works well in most of it applications." *Id.* at 120. The court observed that determination of whether an employee is a fixed-situs employee requires a determination of whether the employee "commences his or her substantial employment duties only after arriving at a specific and identifiable work place designated by his employer * * * [and that] the focus remains the same even though the employee may be reassigned to a different work place monthly, weekly, or even daily." *Id.* at paragraph one of the syllabus. Accordingly, "[d]espite periodic relocation of job sites, each particular job site may constitute a fixed place of employment." *Id.*

{¶ 24} *Ruckman* concerned oil rigger employees of an oil drilling company who were assigned to locations that frequently changed—the oil riggers were assigned to a specific drilling site for periods typically lasting between three and ten days. *Id.* at 124. A

majority of the court concluded that the riggers were fixed-situs employees and that the coming-and-going rule applied to them, noting that the riggers "had no duties to perform away from the drilling sites to which they were assigned" and that their workdays "began and ended at the drilling sites." *Id.* at 120.

{¶ 25} In the first paragraph of the syllabus to *Ruckman*, the majority concluded that a fixed job site, to which a fixed-situs employee is assigned to report, might include a site that was fixed for as short a period as one day. But the *Ruckman* court did not hold that an employee such as claimant, who was assigned to multiple locations during the course of a single day, was a fixed-situs employee as to each of those locations. Indeed, that conclusion is inconsistent with the court's observations in *Ruckman* that the "riggers' workday began and ended at the drilling sites." *Id.* Moreover, this court does not find it logical to characterize the last of the three homes claimant visited on the day of his accident as a fixed situs of employment. Not only was he at the home for a period of, at best, several hours, it does not appear from the record that he had ever been there before, nor was there any expectation that he would return to that location.

{¶ 26} Our holding in *Lippolt*, decided after *Ruckman*, is consistent with a second analytical tool—the "traveling employee" doctrine—which has also been used by courts in determining whether an employee's injuries occurred during the course of employment. In *Lippolt*, we found that an injury sustained by an employee during a week-long sales trip was compensable even though the injury occurred while the employee was walking from a hotel parking lot to the hotel lobby to check in for the night. We concluded that "[w]hether the employment situs is fixed or non-fixed and, therefore whether the coming-and-going rule applies to defeat compensation 'depends upon whether the traveling itself was part of the employment, either by virtue of the nature of the occupation or by virtue of the contract of employment.' " *Lippolt* at ¶ 12, quoting *Fletcher v. Northwest Mechanical Contr. Inc.*, 75 Ohio App.3d 466 (6th Dist.1991). We further observed that the Supreme Court of Ohio has "stated that *a traveling salesman* is necessarily and 'continuously in the discharge of his duties when he is traveling in his allotted territory for the purpose of selling goods.' " (Emphasis added.) *Lippolt* at ¶16, citing *Indus. Comm. v. Heil*, 123 Ohio St. 604, 606-07 (1931). We also noted that the Supreme Court has recognized that *"persons employed as salesmen*, servicemen or insurance adjusters * * * have no fixed

place of employment, their place of employment is the area they service, the very nature of their employment requires them to go from place to place over the public highways, and the traveling to each place to work is necessarily in the course of their employment." (Emphasis added.) *Lippolt* at ¶ 16, citing *Lohnes v. Young*, 175 Ohio St. 291, 293 (1963).

{¶ 27} In 2009, the Sixth District Court of Appeals decided a post-*Ruckman* case whose facts are similar to those in the case before us in that both involve salesmen injured in traffic accidents while traveling either to or from their personal residences. In *Bennett v. Goodremont's, Inc.*, 6th Dist. No. L-08-1193, 2009-Ohio-2920, an auto accident occurred when Bennett, a photocopier salesman, was in transit from his home to the employer's office. Like claimant, Bennett often traveled directly from his home office to a client's place of business without first stopping at the employer's main office location. The *Bennett* court held that the coming-and-going rule did not preclude compensation to that employee, for whom travel was a necessary and required part of employment. It cited our decision in *Lippolt* for the proposition that, "[w]here traveling itself is part of the employment, either by virtue of the nature of the occupation or by virtue of the contract of employment, the employment situs is non-fixed, and the coming-and-going rule is, by definition, inapplicable." *Id. at* ¶ 19. The court further noted that "[c]onsideration of an employee's 'substantial employment duties' requires more than just a look at what the employee was doing when the incident that precipitated the claim occurred; rather, it requires examination of the employee's duties as a whole and consideration of whether such duties were such as to make travel to and from the employee's home an integral part of the employee's employment." *Id.* at ¶ 19.

{¶ 28} Similarly, in a case concededly decided before *Ruckman*, the First District recognized that a salesman's injuries were compensable when sustained in an automobile accident that occurred while the salesman, who did not have office space, was driving from a customer's place of business to the salesman's own home, where he maintained a home office. *Rankin v. Thomas Sysco Food Servs.*, 1st Dist. No. C-950904 (Nov. 27, 1996).

{¶ 29} The holdings in *Lippolt, Bennett,* and *Rankin* are consistent with the "traveling employee" doctrine. *See also Pascarella v. ABX Air, Inc.*, 12th Dist. No. CA98-01-002 (Aug. 10, 1998), citing 2 Larson, Workers' Compensation Law, Section 25.00, 5-

286 (1997) ("[e]mployees whose work entails travel away from the employer's premises are * * * within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown"). Nevertheless, we acknowledge, as the court in *Pascarella* did, that Ohio courts have refused to find injuries compensable "where the injuries occurred during an employment-related trip, but while the employee was engaged in a purely personal mission or errand." *Griffith v. Miamisburg*, 10th Dist. No. 08AP-557, 2008-Ohio-6611, ¶ 13, citing *Fisher*, citing, *Cline v. Yellow Transp., Inc.*, 10th Dist. No. 07AP-498, 2007-Ohio-6782; *Lippolt* at ¶ 18; *Roop v. Centre Supermarkets, Inc.*, 6th Dist. No. L-86-206 (Apr. 24, 1987); *Marbury v. Indus. Comm.*, 62 Ohio App.3d 786 (2d Dist.1989); *Elsass v. Commercial Carriers, Inc.*, 73 Ohio App.3d 112 (3d Dist.1992). *See also Jones v. USF Holland, Inc.*, 10th Dist. No 10AP-537, 2011-Ohio-2368, ¶ 18-19 (in determining whether a claimant meets the "in the course of employment" prong of the statutory test of a claimant's right to participate, "an employee remains in the course of employment when traveling in connection with his or her employment *except when the employee is on a personal errand*." (Emphasis added.)

{¶ 30} In short, Ohio courts have rejected the proposition that an employee traveling on a business trip is necessarily in the course of employment during his or her entire time away. Thus, in *Jones*, we decided a case involving an over-the-road trucker who was injured when he slipped and fell in his hotel room. We recognized that "[t]raveling was an essential part of Jones' job duties and, therefore, benefited his employer." *Jones* at ¶ 20. But, despite satisfying the course-of-employment prong, Jones's injuries did not satisfy the second prong of the coverage test, i.e., the arising-out-of-employment prong. Examining the totality of the circumstances surrounding the fall, we concluded that there was an insufficient causal connection between Jones's injuries and his employment. *Id.* at ¶ 23. We distinguished *Lippolt*, observing that "an injury that occurs when a traveling salesman walks from his rental car to his hotel to check in *(Lippolt*) has a greater causal connection to his employment than an injury that occurs when a traveling truck driver slips and falls in the bathroom of his hotel room after taking a shower." *Id.* at ¶ 25.

{¶ 31} Applying the foregoing precedent to the case before us, we find that claimant's travel over central Ohio roads to the homes of potential customers to examine

their basements was clearly an integral part of claimant's employment duties. Claimant was not expected to arrive at the company office unless specifically instructed to do so. Claimant was not a fixed-situs employee who, at the time of his accident, was commuting to or from his fixed situs of employment. Rather, his accident occurred while he was engaged in travel from the home of a potential customer to which he had driven, at his employer's direction, to inspect a basement and describe waterproofing services his employer could provide. He was engaged in precisely the activities that his supervisor described as constituting 90 percent of his work time as a sales consultant.

{¶ 32} Moreover, claimant testified that he would have traveled the same route to his home whether or not he stopped at the office to drop off paperwork. There is no other evidence to support the conclusion, nor has it even been suggested that claimant was on a personal errand at the time of the accident. At the time of his accident, he was traveling a direct route from the location to which he was assigned to his home. He was not a fixed-situs employee, and the coming-and-going rule did not apply.

{¶ 33} Accordingly, under our precedent, it is clear that claimant satisfies the first prong of the coverage analysis. We have consistently held, as demonstrated by *Lippolt*, *Griffith*, and *Jones*, that nonfixed-situs traveling employees are in the course of their employment continuously while traveling, and claimant was in the course of his employment when the accident occurred.

{¶ 34} But, as noted above and discussed in *Jones*, our determination that claimant was not subject to the coming-and-going rule and was in the course of his employment does not necessarily mandate a finding that claimant's injuries are compensable. We must also determine whether injuries resulting from his auto accident arose out of his employment. The Supreme Court of Ohio has determined that the " 'in the course of prong' is construed to relate to the time, place and circumstances of the injury, while the 'arising out of' prong is interpreted as referring to a causal connection between the employment and the injury." *Fisher v. Mayfield*, 49 Ohio St.3d 275, 277 (1990).

{¶ 35} In determining whether claimant has satisfied the "arising-out-of-employment" prong, we must examine whether, under the particular facts of this case, there was a sufficient causal connection between his alleged injury and his employment.

We do so by examining the totality of circumstances, including, inter alia, the factors set forth in *Lord v. Daugherty*, 66 Ohio St.2d 441 (1980), and *Fisher* at 277. "Those factors include: (1) the proximity of the scene of the accident to the place of employment; (2) the degree of control the employer had over the scene of the accident; and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." *Jones* at ¶ 22, citing *Lord*. Moreover, the "list of factors in *Lord* is not exhaustive, but is merely illustrative of the facts to be considered in assessing the totality of the circumstances." *Id.*, citing *Fisher* at 279. "The key inquiry is the presence or absence of a sufficient causal nexus between the injury and the employment." *Id. Accord Ruckman* at 121.

{¶ 36} Having examined the totality of the circumstances, we find that claimant's auto accident did arise out of his employment. As in *Lippolt*, there was a clear causal connection between a substantial obligation of his employment, i.e., driving to and from homeowners' residences, and the injuries he suffered in a motor vehicle accident during such a drive.

{¶ 37} As to the first *Lord* factor, proximity of the accident to the place of employment, we observe that OSHS's own witness testified that traveling to potential customer's homes and engaging in sales visits constituted 90 percent of claimant's job responsibilities. To the extent claimant had a "place of employment," that place was in the homes of potential customers the company assigned him to visit and on the roads he was obligated by his employment to traverse to arrive at and return from those homes. Claimant was on a direct route back to his home after the sales presentation in Marion, and his accident therefore occurred directly at that place of employment. He was not on a personal errand that caused him to detour from that direct route, nor was he engaged in an activity that was a "highly personal act." *See Jones* at ¶ 23. Rather, he was directly engaged in an activity that was logically related to his employer's business. *Contrast Jones* at ¶23 (when Jones slipped on the bathroom floor of his hotel room after taking a shower he "was not engaged in an activity that was logically related to USF Holland's business nor incidental to it").

{¶ 38} We do not find it relevant that claimant's accident occurred after claimant decided to proceed directly towards his home, rather than first stopping at his employer's

Hilliard office to drop off paperwork. That conclusion is consistent with that of the First District Court of Appeals in *Rankin*, which concluded that the fact that "the accident happened to be somewhat close to [the employer's] offices is irrelevant given the circumstances." *Rankin*.

{¶ 39} As to the second *Lord* factor, the degree of the employer's control, it is true that OSHS lacked control over the scene of claimant's accident and likely could not have prevented it short of instructing claimant not to drive to the home in Marion on the day of the accident in light of potential hazardous driving conditions. His employer's lack of control over the scene of the accident, however, does not preclude a finding that claimant's injuries arose out of his employment, as we have observed that "the absence of this one factor [i.e., degree of employer's control over the accident scene] cannot be considered controlling to deny coverage." *Griffith* at ¶ 31. *See also Ruckman* at 122 ("failure to satisfy the three enumerated factors of the *Lord* test, however, does not foreclose further consideration * * * as the enumerated factors are not intended to be exhaustive"). Again, we find persuasive the reasoning of the First District in *Rankin*:

> [The employer] had no control over the accident scene, although it could be argued that it waived direct control over its salespeople and their "tools of the trade," their own automobiles. [Citation omitted.] [The employer] relies heavily on the control factor but we do not find it to be dispositive given that [the employer] had little or no control over its salespeople at any time during the day.

{¶ 40} Moreover, as both this court and the Supreme Court of Ohio have noted, "[t]he test of the right to participate in the Workers' Compensation Fund is not whether there was any fault or neglect on the part of the employer or his employees." *Lippolt*, at ¶ 10, citing *Bralley* at 303.

{¶ 41} As to the third *Lord* factor, the degree to which the employer benefited from the employee's presence at the scene of the accident, it is clear that OSHS benefited from the claimant's presence on public roads and highways—its business was dependent upon in-person examinations of the basements of potential customers. Those examinations could only be performed by employees who traveled to them. Again, as observed by the *Rankin* court, "the company reaped the benefits of Rankin's constant travel on the

highway to make sales calls, travel that increased the risk to Rankin far beyond that of the general public simply traveling to and from a fixed site of employment." *Rankin*.

{¶ 42} In summary, viewing the accident in light of the totality of the circumstances, and consistent with our responsibility to liberally construe the workers' compensation statutes in favor of the employee as required by R.C. 4123.95, we find that claimant's injuries, if any, were sustained in the course of employment and also arose out of his employment.

III. DISPOSITION

{¶ 43} For the foregoing reasons, we sustain all four of claimant's assignments of error and reverse the summary judgment awarded by the Franklin County Court of Common Pleas in favor of appellees. We remand the case to that court for it to determine any remaining issues relevant to the question of whether claimant has a right to participate in the Worker's Compensation Fund.

Judgment reversed and cause remanded with instructions.

BROWN, P.J., and SADLER, J., concur.
