[Cite as *Rees v. Univ. Hosps.*, 2017-Ohio-1372.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104848

LORI REES

PLAINTIFF-APPELLEE

vs.

UNIVERSITY HOSPITALS, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-849007

BEFORE: Celebrezze, J., E.A. Gallagher, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: April 13, 2017

ATTORNEYS FOR APPELLANT

Kirk R. Henrikson
Erin E. Hooper
Matty, Henrikson & Greve, L.L.C.
55 Public Square, Suite 1775
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

Paul W. Flowers
Paul W. Flowers Co., L.P.A.
Terminal Tower, Suite 1910
50 Public Square
Cleveland, Ohio 44113

Frank L. Gallucci
Fred S. Papalardo
Plevin & Gallucci Co., L.P.A.
55 Public Square, Suite 2222
Cleveland, Ohio 44113

Also Listed

For Ohio Bureau of Workers' Compensation

Mike DeWine
Ohio Attorney General
By: Jeffrey B. Duber
Assistant Attorney General
615 W. Superior Avenue, 11th Floor
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, University Hospitals ("UH"), appeals a decision of the Cuyahoga County Common Pleas Court awarding workers' compensation benefits to appellee, Lori Rees. UH claims that the accident that resulted in Rees's injuries did not arise out of or occur in the course and scope of her duties as a nurse at UH's main campus. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} On January 29, 2015, Rees was scheduled to participate in a cardiopulmonary resuscitation ("CPR") training class that was offered by UH at its main campus. CPR certification was required for continued employment as a nurse, and UH offered the classes to its employees free of charge and paid them their normal wage while attending classes. Rees's supervisor scheduled her for the class.

{¶3} That morning, Rees arrived at UH's main campus and parked in the parking garage she normally used. She made her way to the room where the class was held. Once there, she spoke to the CPR instructor. When the instructor learned that Rees had forgotten course materials in her car, Rees was sent back out to get them. Rees went back to her car, retrieved the materials, and was on her way back to the building, walking across Circle Drive, when she fell in a pedestrian crossing. Rees sustained several injuries from her fall.

{¶4} Rees applied for workers' compensation benefits, which were denied by the Industrial Commission hearing officer. That decision was subsequently affirmed by the Industrial Commission. Rees appealed that determination to the common pleas court on July 30, 2015. After the court denied UH's motion for summary judgment, the case proceeded to trial where the parties submitted a joint stipulation of facts and trial briefs. The trial court then issued a decision on August 4, 2016, allowing benefits. UH then filed this appeal assigning the following error for review:

> I. The trial court erred, as a matter of law, by finding that Appellee-Lori Rees, was entitled to participate in the Ohio Workers' Compensation Fund, as Appellee was not injured within the course of and arising out of her employment with Appellant-University Hospitals.

II. Law and Analysis

{¶5} R.C. 4123.512 provides the right to appeal an order of the Industrial Commission allowing or denying workers' compensation benefits. If an appeal to the common pleas court is filed, "[t]he court, or the jury under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in the fund upon the evidence adduced at the hearing of the action." R.C. 4123.512(D). An appeal from an Industrial Commission decision to the common pleas court involves a de novo review, where the burden of proving entitlement to workers' compensation benefits is on the claimant. *Bennett v. Admr., Ohio Bur. of Workers' Comp.*, 134 Ohio St.3d 329, 2012-Ohio-5639, 982 N.E.2d 666, ¶ 17. The claimant must show such entitlement by a preponderance of the evidence. *Id.* at ¶ 18.

{¶6} Appeals from common pleas court determinations regarding workers' compensation "are governed by the law applicable to the appeal of civil actions." R.C. 4123.512(E). Therefore, UH argues that the common pleas court's decision was against the manifest weight of the evidence. Under this argument, this court weighs the evidence, including all reasonable inferences drawn therefrom, considers the credibility of witnesses, and determines whether the finder of fact clearly lost its way and created such a manifest miscarriage of justice that reversal of that determination is required. *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997); *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517. There is, however, a presumption in favor of factfinders because they are in the best position to gauge the credibility of witnesses. *Eastley* at ¶ 21; *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. This case was decided on a joint stipulation of facts, so that rationale is not entirely applicable to this case.

{¶7} R.C. 4123.01(C) specifies that a compensable injury is one that occurs "in the course of and arises out of" the employment relationship. Below it was Rees's burden to satisfy both requirements. "[W]orkers' compensation statutes must be liberally construed in favor of the employee." *Fisher v. Mayfield*, 49 Ohio St.3d 275, 278, 551 N.E.2d 1271 (1990), citing R.C. 4123.95.

{¶8} In order to qualify for benefits, the injury must have occurred in the course of employment.

> The phrase "in the course of employment" limits compensable injuries to those sustained by an employee while performing a required duty in the employer's service. *Indus. Comm. v. Gintert* (1934), 128 Ohio St. 129, 133-134, 190 N.E. 400, 403. "To be entitled to workmen's compensation, a workman need not necessarily be injured in the actual performance of work for his employer." *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693, 36 Ohio Op. 282, 76 N.E.2d 892, paragraph three of the syllabus. An injury is compensable if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business. *Kohlmayer v. Keller* (1970), 24 Ohio St. 2d 10, 12, 53 Ohio Op. 2d 6, 7, 263 N.E.2d 231, 233.

Ruckman v. Cubby Drilling, 81 Ohio St.3d 117, 120, 689 N.E.2d 917 (1998). Here, Rees was instructed to perform a task by the course instructor, an employee of UH and, for all intents and purposes, Rees's supervisor during the course. Therefore, Rees was engaged in a task within the scope of her employment.

{¶9} The Ohio Supreme Court has developed factors to aid finders of fact in determining whether an injury arises out of the employment relationship.

> Whether there is a sufficient "causal connection" between an employee's injury and his employment to justify the right to participate in the Workers' Compensation Fund depends on the totality of the facts and circumstances surrounding the accident, including the (1) 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.

Lord v. Daugherty, 66 Ohio St.2d 441, 423 N.E.2d 96 (1981), syllabus.

{¶10} Here, there is sufficient causal connection between Rees's injury and her employment. Rees was sent to her car to get materials for a training class by the instructor. Applying the above factors, the area where the accident occurred was in a public street between a parking garage and Rees's work location on UH's campus. This is the area where Rees was required to go by the course instructor. UH did not maintain control over the public street on which Rees fell, but that is not dispositive. For instance, this court found that summary judgment in favor of an employer was inappropriate when an employee was injured in a car accident that occurred on a public road because there could be a sufficient causal connection between the injury and the employment. *Jones v. Multicare Health & Edn. Servs.*, 8th Dist. Cuyahoga No. 98899, 2013-Ohio-701, ¶ 27. The employee in *Jones* was returning from a lunch break and traveling to a pharmacy to fill a client's prescription when he was involved in an automobile accident. *Id*. at ¶ 4. This court found there were material questions of fact that made the grant of summary judgment in favor of the employer inappropriate. *Id*. at ¶ 27.

{¶11} The Supreme Court of Ohio also found, under similar circumstances, that an employee was entitled to benefits when he was injured after he fell in a public street walking from the employer's parking lot to the employer's factory:

> Appellee parked his automobile in the only employer parking lot then available to him free of charge. His injuries occurred on the public street as he proceeded, without deviation, toward the plant entrance prior to the

> commencement of his shift. Finally, appellee could not reach the plant entrance without crossing the public street. On these facts, it would be unreasonable to deny appellee compensation.

Baughman v. Eaton Corp., 62 Ohio St.2d 62, 63, 402 N.E.2d 1201 (1980). Here, there are some differences, like the fact that UH charged its employees for parking or that UH had other garages, but those do not detract from the applicability of this case to our analysis.

{¶12} Finally, UH received a benefit from Rees's presence at the CPR class. UH argues that because Rees was attending a training class rather than her normal shift, there is a lesser benefit or no benefit to it. However, CPR certification was a requirement for continued employment and UH offered the classes to its employees in order to have a well-trained staff that could better serve its customers. Further, while several training sessions were offered and Rees could attend others, her supervisor scheduled her for this session, for which Rees was being paid as though she was working in her normal position. The fact that Rees was attending a training session as opposed to reporting for her normal shift does not negate the benefit to the employer.

{¶13} For people who normally report to work at a fixed location, a rule of law has developed that excludes benefits for those going to or coming from that location:

> "As a general rule, an 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 injury and the employment does not exist." *MTD Products, Inc. v. Robatin* (1991), 61 Ohio St.3d 66, 68, 572 N.E.2d 661 (Citation omitted). The rationale supporting the coming-and-going rule is "[t]he constitution and the statute, providing for compensation from a fund created by assessments upon the industry itself, contemplate only those hazards to be encountered by the employe[e] in the discharge of the duties of his employment, and do not embrace risks and hazards, such as those of travel to and from his place of actual employment over streets and highways, which are similarly encountered by the public generally." *Ruckman v. Cubby Drilling, Inc*. (1998), 81 Ohio St.3d 117, 119, 689 N.E.2d 917, citing *Indus. Comm. v. Baker* (1933), 127 Ohio St. 345, 188 N.E. 560, 39 Ohio L. Rep. 651, paragraph four of the syllabus.

Price v. Goodwill Industrial of Akron, 192 Ohio App.3d 572, 2011-Ohio-783, 949 N.E.2d 1036, ¶ 14 (5th Dist.).

{¶14} Workers' compensation cases are generally highly individual and fact-specific. However, the present case shares remarkable similarities to *Weiss v. Univ. Hosps. of Cleveland,* 137 Ohio App.3d 425, 431, 738 N.E.2d 884 (8th Dist.2000). In *Weiss,* an employee of UH, Weiss, was assigned to the same parking garage that Rees used. Weiss was injured crossing a public street that was under construction as she traveled from the parking garage to the building where she worked on the UH campus. The *Weiss* court determined that because Weiss was on her way to work, but not yet

within the "zone of employment," the coming-and-going rule applied, and Weiss was not entitled to workers' compensation benefits.

{¶15} There are distinctions between the present case and *Weiss*. First, Rees had reported to the location where she was to "work" that day. She had arrived for work, entered the zone of employment and was directed back to her car. She was no longer simply going to or coming from work. UH treated the four-hour CPR course as a part of Rees's work day. The jointly stipulated facts indicate that when employees such as Rees take the CPR course, their scheduled shift is reduced by the corresponding amount of time spent in training. So, Rees had arrived at her designated work location on the day of the accident. She arrived without necessary course materials, however, and had to return to her car to retrieve them.

{¶16} The *Weiss* court determined that the employee had not yet entered the zone of employment. The above factor is sufficiently distinct to distinguish the cases. Further, the employer is reasonably expected to know that Rees was going to her car when she was directed to return to her car. The fact that Rees had arrived at her designated work site and was sent out to her car means that her injury more closely mirrors those cases of workplace errands rather than *Weiss*.

{¶17} The "special mission" exception has developed to allow benefits when employees are traveling at the behest of their employer.

> "An exception to the general rule * * * that the workmen's compensation law ordinarily does not cover an employee injured while going to, or

> returning from, his employment exists where the injury is sustained by the employee while performing a special task, service, mission, or errand for his employer, even before or after customary working hours, or on a day on which he does not ordinarily work. For the exception to arise, the mission must be the major factor in the journey or movement, and not merely incidental thereto, and the mission must be a substantial one."

(Citations omitted.) *Seese v. Admr., Bur. Workers' Comp.*, 11th Dist. Trumbull No. 2009-T-0018, 2009-Ohio-6521, ¶ 34, quoting *Pierce v. Keller*, 6 Ohio App.2d 25, 29, 215 N.E.2d 601 (3d Dist.1996).

{¶18} Here, the only reason for Rees to return to her car was at the request of the course instructor to retrieve material necessary for the completion of a class required for her continued employment. The case more closely resembles those lines of cases dealing with special missions than it does *Weiss*. Applying all the facts and circumstances to this case, and being mindful that workers' compensation statutes should be liberally construed in favor of an injured employee, Rees has demonstrated that she is entitled to workers' compensation benefits. Therefore, UH's assigned error is overruled.

III. Conclusion

{¶19} The trial court correctly concluded that *Weiss* did not dictate the outcome in this case. Applying the arising out of and in the scope of factors to this case, Rees was engaged in activity that is consistent with the contract for hire and that related to her job duties and the requirements placed on her by UH necessary to engage in the business of

her employer. As a result, the trial court correctly found that Rees was entitled to workers' compensation benefits.

{¶20} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

EILEEN A. GALLAGHER, P.J., and
TIM McCORMACK, J., CONCUR