[Cite as *Jones v. USF Holland, Inc.*, 2011-Ohio-2368.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Cory Jones,	:	
Plaintiff-Appellant,	:	
		No. 10AP-537
v.	:	(C.P.C. No. 09CVD02-02076)
USF Holland, Inc. et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on May 17, 2011

Barkan & Barkan Co., L.P.A., *Matthew T. Wolf* and *Richard J. Forman*, for appellant.

Thomas & Company, L.P.A., *William R. Thomas* and *Cheryl L. Jennings*, for appellee USF Holland, Inc.

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

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, Cory Jones, appeals from a decision of the Franklin County Court of Common Pleas granting summary judgment in favor of defendant-appellee, USF Holland, Inc. Because Jones' injury did not arise out of his employment as required by R.C. 4123.01(C), we affirm.

Facts and Procedural History

{¶2} The following facts are undisputed. USF Holland is a self-insured trucking company that transports cargo throughout the United States. Jones was employed by USF Holland as an over-the-road truck driver. Jones' job required him to drive long distances hauling shipments to terminals inside and outside Ohio. Jones' home terminal was in Columbus/Hilliard, Ohio.

{¶3} In the early morning of August 12, 2008, Jones delivered his cargo to USF Holland's terminal near Chattanooga, Tennessee. He parked his truck and turned in his paperwork. After punching his manifest, he went "off the clock" (i.e., Jones was now on his own time).

{¶4} The United States Department of Transportation regulations require over-the-road truck drivers such as Jones to take a mandatory ten-hour rest period following the completion of their assigned route and/or after they have driven the maximum number of hours permitted under the regulations. Through a third-party contractor, USF Holland selected and approved certain hotels where its drivers could satisfy the mandated rest period. Although its drivers were not required to stay at the approved hotels, USF Holland had accounts at these hotels, thereby simplifying the reservation and billing process for its drivers. If a driver decided to stay at a non-approved hotel, he or she would make their own arrangements, pay for the room with their own funds, and then request reimbursement from USF Holland.

{¶5} After Jones punched his manifest, a supervisor for USF Holland called the Howard Johnson Inn, a hotel approved by USF Holland, and requested that the hotel send a van to pick Jones up and take him to the hotel. A hotel van arrived and

transported Jones to the hotel, which was located between two and four miles away. USF Holland paid for Jones' stay at the Howard Johnson Inn on August 12, 2008.

{¶6} After checking in, Jones ate breakfast at the hotel and later went to his room. Because Jones was "off the clock," he was free to go wherever he wanted and free to do whatever he wanted. Jones fell asleep sometime between 12:00 p.m. and 1:00 p.m. Jones was awakened about 7:30 p.m. when he received a call on his hotel room telephone from the supervisor in charge of USF Holland's Chattanooga terminal. The supervisor informed Jones that he was to report to USF Holland's Chattanooga terminal within two hours for a new delivery assignment. Until he reported for work at the terminal, Jones remained "off the clock."

{¶7} Shortly after receiving that call, Jones shaved, brushed his teeth, and took a shower. After taking his shower, Jones injured himself when he slipped and fell on the ceramic tile in the bathroom of his hotel room.

{¶8} Jones filed a workers' compensation claim alleging that he sustained work-related injuries as a result of his slip and fall in the bathroom of his hotel room on August 12, 2008. USF Holland denied the claim, contending that Jones' injuries were not received in the course of and arising out of his employment. A district hearing officer denied his claim and Jones appealed that decision. On appeal, a staff hearing officer vacated the district hearing officer's decision and allowed Jones' claim for the following conditions: (1) right shoulder/arm strain; (2) sprain of right knee and leg; (3) superficial injury to head and neck; (4) contusion of the right shoulder/arm; and (5) contusion of right, lower leg. USF Holland appealed that decision. The industrial commission refused USF Holland's appeal.

{¶9} USF Holland challenged the administrative determination in the Franklin County Court of Common Pleas pursuant to R.C. 4123.512. Ultimately, both Jones and USF Holland filed motions for summary judgment. The trial court granted USF Holland's motion for summary judgment and denied Jones' motion for summary judgment. The trial court determined that Jones' injuries were not received in the course of and arising out of his employment with USF Holland. Therefore, Jones' injuries were not compensable under the Ohio Workers' Compensation Act.

{¶10} Jones now appeals, assigning the following error:

> THE TRIAL COURT ERRED IN GRANTING APPELLEE, USF HOLLAND, INC.'S MOTION FOR SUMMARY JUDGMENT AND DENYING APPELLANT, CORY JONES['] MOTION FOR SUMMARY JUDGMENT HOLDING THAT JONES' INJURIES DID NOT OCCUR IN THE COURSE OF, OR ARISE OUT OF, JONES' EMPLOYMENT WITH USF HOLLAND, INC'S.

Analysis

{¶11} Jones contends in his sole assignment of error that the trial court erred when it granted summary judgment in favor of USF Holland rather than in his favor on grounds that his injuries did not occur in the course of and arising out of his employment. In light of the undisputed facts, we agree that Jones' injuries occurred in the course of his employment, but we disagree that his injuries arose out of his employment.

{¶12} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588 (citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711). When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v.*

Bank One Columbus, N.A. (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶13} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Harless v. Wilis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

Right to Participate in Workers' Compensation Fund

{¶14} "The 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, but whether a 'causal connection' existed between an employee's injury and his employment either through the activities, the conditions or the environment of the employment." *Bralley v. Daugherty* (1980), 61 Ohio St.2d 302, 303. For purposes of the Ohio Workers' Compensation statutes, " '[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." R.C. 4123.01(C). Thus, to be compensable under the workers' compensation fund, an employee's injury must be

received in the course of, and arising out of, his or her employment. Id.; *Bralley* at 303; *Lippolt v. Hague, Inc.*, 10th Dist. No. 08AP-140, 2008-Ohio-5070, ¶10.

{¶15} The Supreme Court of Ohio has expressly recognized the conjunctive nature of the statutory requirement that the injury be "in the course of and arising out of the employment" before an employee can participate in the workers' compensation fund. *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277. The employee bears the burden to prove both prongs of this two-prong formula. Id. at 279. In interpreting the relevant statutory requirements, we recognize that the workers' compensation statutes should be liberally construed in favor of awarding benefits. R.C. 4123.95; *Fisher* at 278.

Course of Employment

{¶16} The first prong of the statutory formula is that an injury occur "in the course of employment." In the course of employment relates to the time, place, and circumstances of the injury. *Fisher* at 277. An employee need not necessarily be injured in the actual performance of work for the employee to be entitled to workers' compensation. Rather, an injury is in the course of employment if sustained in activity that is consistent with the employee's contract of hire and is logically related to the employer's business or incidental to the employment. *Ruckman v. Cubby Driling, Inc.*, 81 Ohio St.3d 117, 120, 1998-Ohio-455 (citing *Kohlmayer v. Keller* (1970), 24 Ohio St.2d 10, 12); *Fisher* at 278; *Lippolt* at ¶14.

{¶17} Generally, the issue of whether an employee is acting within the course of employment is a question of fact. However, when the facts are undisputed, it becomes a question of law. *Lippolt* at ¶15. In the case at bar, the essential facts are undisputed.

Therefore, whether Jones sustained his injury in the course of his employment is a question of law. Id.

{¶18} In *Lippolt*, this court addressed the "course of employment" prong of the statutory test when an employee's job responsibilities require travel other than a commute to a fixed employment site. We held that 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. Lippolt worked as a traveling salesman. He was injured in a hotel parking lot as he walked from his rental car to the hotel to check in. Noting that Lippolt's employment required him to stay in hotels during his weeks on the road, we found that checking into a hotel was consistent with his employment and not a personal errand. Therefore, we held that Lippolt was in the course of his employment when he was injured. Id. at ¶17-23.

{¶19} Other appellate courts have interpreted the "in the course of employment" prong of the statutory test in a similar manner. See *Pascarella v. Abx Air, Inc.* (Aug. 10, 1998), 12th Dist. No. CA98-01-002 (quoting 2 Larson, Workers' Compensation Law, (1997) 5-286, Section 25.00 ("[E]mployees whose work entails travel away from the employer's premises are * * * within the course of their employment and continuously during the trip, except when a distinct departure on a personal errand is shown[.]"); *Masden v. CCI Supply, Inc.*, 2d Dist. No. 22304, 2008-Ohio-4396, ¶12 (holding that the claimant was a traveling employee who was in the course of his employment the entire time that he was traveling except when he was on a personal errand and that the claimant was not on a personal errand while resting at his motel); *Cline v. Yellow Transp., Inc.*, 10th Dist. No. 07AP-498, 2007-Ohio-6782, ¶18-20 (holding that a traveling employee

struck by a car while crossing the street to eat at a restaurant located across from his hotel was on a personal errand and therefore, he was not entitled to workers' compensation benefits).

{¶20} Here, because Jones was an over-the-road truck driver, he was a traveling employee. He was staying at a hotel approved and paid for by USF Holland when he was injured. Traveling was an essential part of Jones' job duties and, therefore, benefited USF Holland. Jones was staying at the hotel to comply with the federally-mandated rest period for over-the-road truck drivers. He was in a location encouraged by USF Holland and was engaged in conduct that was consistent with his employment responsibilities—i.e., preparing himself for his next work assignment. Although at the time he sustained his injuries, Jones was engaged in an activity associated with personal hygiene, we find that he was not on a personal errand. Therefore, contrary to the finding of the trial court, we conclude that Jones was "in the course of his employment" when he slipped in the bathroom after showering.

Arising Out of Employment

{¶21} Although Jones has satisfied the first prong of the statutory test, our inquiry does not end there. Jones' injury must also arise out of his employment for him to participate in the workers' compensation fund. *Fisher* at 277. When the facts are undisputed, this issue can be resolved as a matter of law. *Lippolt* at ¶26-27.

{¶22} The statutory requirement that an injury must arise out of the employment refers to a sufficient causal connection between the employment and the injury. *Fisher* at 277. In determining whether there is a sufficient causal connection between the injury and employment, courts examine the totality of circumstances, including those factors set

forth in *Lord v. Daugherty* (1981), 66 Ohio St.2d 441. *Fisher* at 278-79. 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. *Lord* at 444. 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. *Fisher* at 279. The key inquiry is the presence or absence of a sufficient causal nexus between the injury and the employment.

{¶23} Here, in examining the totality of the circumstances surrounding Jones' injury, including the *Lord* factors, we agree with the trial court that there is an insufficient causal connection between Jones' injury and his employment. Contrary to Jones' contention, the hotel was not in close proximity to USF Holland's truck terminal. Although USF Holland did select the hotel and pay for Jones' room, it had absolutely no control over the scene of the accident. We recognize that USF Holland received some benefit from Jones' presence at the scene of the accident. USF Holland did benefit from having a well-rested employee. It may also have benefited from Jones' decision to stay at the Howard Johnson Inn. Nevertheless, Jones was not engaged in an activity that was logically related to USF Holland's business nor incidental to it when he slipped on the bathroom floor after taking a shower. There is simply an insufficient causal nexus between the highly personal act of taking a shower and USF Holland's business of transporting cargo by truck. To conclude otherwise would convert the "arising out of employment" prong into a simple "but for" test. Therefore, we conclude as a matter of

law that Jones' injury did not "arise out of" his employment as required by R.C. 4123.01(C).

{¶24} On almost identical facts, the Ninth District Court of Appeals reached the same conclusion in *Lewis v. TNT Holland Motor Express, Inc.* (1998), 129 Ohio App.3d 131. In *Lewis*, an over-the-road truck driver, while traveling in connection with his job, was injured when he slipped and fell exiting the shower in his hotel room. The driver sought workers' compensation for his injuries. Applying the *Lord* factors, the court concluded that the driver had not met the "arising out of" requirement of R.C. 4123.01(C). The court noted that "control over the bathtub conditions was solely with the hotel" and that "[i]t is difficult to conceive how [the employer] could have prevented Lewis from slipping and falling while leaving the bathtub." *Lewis* at 134. The court concluded that "falling out of a bathtub after taking a shower is not a risk incident to the duties of a long distance truck driver." Id. Therefore, the employer was entitled to summary judgment. The case at bar involves essentially the same facts, and for similar reasons, we reach the same conclusion.

{¶25} Jones argues that our decision in *Lippolt* compels us to find that his injury arose out of his employment. We disagree. *Lippolt* is factually distinguishable. The strength of the causal relationship between a traveling employee's injury and his or her employment turns on the specific facts presented. 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. Therefore, our conclusion here is not inconsistent with *Lippolt*.

Conclusion

{¶26} For the foregoing reasons, we overrule Jones' sole assignment of error. Because USF Holland is entitled to judgment as a matter of law, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.