SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

Thomas B. Lackey, Esquire
Eric M. Doroshow, Esquire
Doroshow, Pasquale Krawitz & Bhaya
1008 N. Walnut Street
Milford, Delaware 19963

Maria Paris Newill, Esquire
Heckler & Frabizzio
The Corporate Plaza
P.O. Box 128
Wilmington, Delaware 19899-0128

RE: ***Mary E. Spellman v. Christiana Care Health Services***
C.A. No. S11A-08-001 RFS

Upon Claimant's Appeal of a Decision of the Industrial Accident Board.
Affirmed.

Date Submitted: March 15, 2012
Date Decided: May 17, 2012

Dear Counsel:

This is my decision affirming a determination by the Industrial Accident Board ("Board") that Claimant Mary Spellman's injuries are not compensable because she was not acting within the course and scope of her employment at the time she was injured.

Claimant worked as a home health aide for Christiana Care Visiting Nurses Association ("VNA"). Instead of going to an office every day, Spellman used a

telephonic system to check her schedule, clock in and out of appointments and record travel and mileage reimbursements. The VNA handbook states that mileage is paid for each visit to a client, but not from the time of leaving home to go to work or leaving the last client's residence to return home.

On January 13, 2011, Claimant blocked off time from 10:30 a.m. to 1:00 p.m. for a doctor's visit the next day. On January 14, she visited two clients and clocked out at 10:32 a.m., as scheduled. On the way home to freshen up before going to the doctor, Claimant was involved in a one-car accident causing serious injury to herself.

Whether a claimant's injuries occurred in the course and scope of her employment is a legal question determined by viewing the totality of the facts.[1] The Court's role on appeal from the Board is to decide whether the Board's conclusions are supported by substantial evidence and are free from legal error.[2] Substantial evidence is evidence that a reasonable person might accept as adequate to support a conclusion.[3] This Court does not weigh the evidence, determine questions of credibility or make factual findings.[4]

A personal injury sustained in an accident that occurred during and in the scope of employment is compensable.[5] Compensation is not paid for injuries sustained while an

---

[1] *Collier v. State*, 1994 WL 381000 (Del.Super.).

[2] *Johnson v. Chrysler Corp. v. Freeman*, 164 A.2d 686, 688 (Del.1960).

[3] *Oceanport Indus. Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del.1992).

[4] *Johnson, supra*, at 688.

[5] Title 19 *Del.C.* § 2304.

employee is traveling to or from work because every driver experiences the same risks while driving.[6] This is known as the "going and coming" exception or the premises rule.[7] Claimant was coming home from work at the time of the accident.

Exceptions to the premises rule exist for employees who are sent on special errands for the employer and for employees who are continuously on call.[8] Claimant fits neither of these exceptions.

A personal comfort exception to the premises rule also exists. That is, traveling employees with no fixed site of employment may stop to eat a meal or sleep in a hotel without leaving the scope of their employment.[9] This exception does not apply to Claimant, who was driving home.

An exception is also recognized for a person whose trip served both a personal and a professional purpose.[10] Claimant argues that this exception applies to her because her accident occurred on the same road she would have traveled if she were going to her next appointment. However, it is uncontested that Claimant was not headed to her next appointment but instead headed home and was already off the clock. Her purpose was strictly personal, and this exception does not apply.

---

[6] *Bedwell v. Brandywine Carpet Cleaners*, 684 A.2d 302, 304 (Del.Super.1996).

[7] *Histed v. E.I. Du Pont De Nemours & Co.*, 621 A.2d 340, 342 (Del.1993).

[8] *Devine v. Advanced Power Control, Inc.*, 663 A.2d 1205, 1207 (Del.1995).

[9] *Bedwell, supra*, at 305.

[10] 1-17 *Larson's Workers' Compensation Law* § 17.02.

Another exception is recognized for an employee who works at various temporary job sites, is dispatched to job sites at time and places designated by the employer and does not report to a fixed situs every day.[11] Such an employee has a semi-fixed place of employment whose travel to work is a substantial part of her job, and an accident that occurred in this type of work-related travel may be compensable.[12]

Claimant argued to the Board and on appeal that this exception applies to her case. The Board disagreed, noting that payment of Claimant's travel expenses would have brought her within the scope of this rule, but she was not paid for her expenses. This is confirmed by the fact that Claimant was clocked out and was on a personal trip home before going to see her doctor at the time of the accident.

Viewing a totality of the circumstances, the Court concludes that the Board's decision that Claimant was not acting within the course and scope of her employment when she was injured is supported by substantial evidence and is free from legal error.

The Board's decision denying workers' compensation benefits to Claimant Mary Spellman is **AFFIRMED,** and Claimant's appeal is **DENIED.**

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

---

[11] *Devine, supra*, at 1210.

[12] *Id.* at 1213.