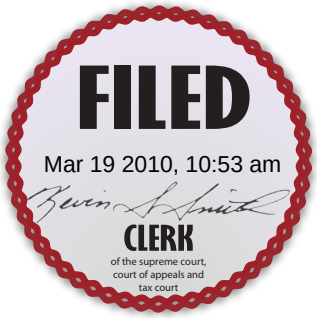

ATTORNEY FOR APPELLANT:

JEFFREY S. STURM
George C. Patrick & Associates, P.C.
Crown Point, Indiana

ATTORNEY FOR APPELLEE:

ROBERT D. HAWK, JR.
Spangler, Jennings & Dougherty, P.C.
Merrillville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ALEX EDWARDS, Deceased,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 93A02-0908-EX-818
	)	
DOMINO'S PIZZA,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Case No. C-177785

March 19, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Mary Edwards, surviving spouse of Alex Edwards ("Edwards"), appeals the decision of the full Worker's Compensation Board (the "Board") affirming the decision of a hearing member, who concluded that Edwards, an employee of the Domino's Pizza ("Domino's") owned by James Gronemann, was not eligible for worker's compensation benefits. Mary raises two issues, which we restate as whether the Board erred when it denied Mary's Application for Adjustment of Claim.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 19, 2005, Edwards was on duty as the manager of the Domino's Pizza on Broadway in Merrillville. Edwards' son, A.J., was on duty that night. Another Domino's employee, Anible Macklin,[1] was also in the store at closing time. Macklin was a banner shaker who worked only during daylight hours. He was not scheduled to and did not work on August 19.

Sometime after A.J. left the store, Edwards closed the store, ran a closeout report, and departed in his own vehicle. Edwards left the store after midnight, early on the morning of August 20. As he had done many times before, Edwards was giving Macklin a ride home. Along the route to Macklin's home, an intoxicated driver rear-ended Edwards' vehicle. Edwards and Macklin were both killed in the accident.

On October 19, 2005, Mary, Edwards' widow, filed an Application for Adjustment of Claim with the Worker's Compensation Board. On December 4, 2008, a single hearing member presided over a contested hearing on the issue of whether

[1] In the record and the briefs on appeal, Macklin's first name is also spelled "Annabelle" and "Anibel." We use the spelling found in the police accident report.

Edwards' accident arose out of and in the course of his employment. The single hearing member made the following findings of fact:

> 1. During the morning hours of August 20, 2005, [Edwards] was fatally struck by a drunk driver while giving [Macklin] a ride home.
>
> 2. At the time of [Edwards'] death, [Edwards] was employed by [Domino's] as a manager, and Macklin was employed by [Domino's] as a banner shaker.
>
> 3. Macklin was not scheduled and did not work on August 19, 2005.
>
> 4. Prior to and after his employment by [Domino's], Macklin socialized with [Domino's'] employees, among others, in the Plaza location of [Domino's] business.
>
> 5. As a favor, [Edwards] and other employees of [Domino's] voluntarily provided Macklin with rides to the Plaza both before and after he was employed by [Domino's], regardless of whether he was there to work or to socialize as a visitor.
>
> 6. [Domino's] did not make any agreement to provide Macklin with rides to or from work, and such was not a condition of Macklin's employment.
>
> 7. After he was employed, when Macklin was not working, he frequently continued to hang out at [Domino's'] place of business to socialize with [Edwards] and others, and would on some occasions be of assistance to other employees as a favor.
>
> 8. Macklin did not work August 19, 2005, per [Domino's'] Daily Recap Report.
>
> 9. [Domino's] did not request that [Edwards] give Macklin a ride home, as [Domino's] had not requested that Macklin even be scheduled to work.
>
> 10. [Edwards] was not on any special errand for [Domino's] and, more specifically, was not making a bank deposit for [Domino's] at the time of the accident.
>
> 11. At the time of the accident, [Edwards] was driving his own personal vehicle and was not at any time reimbursed for his mileage for driving Macklin home.

> 12. [Edwards'] Beneficiary [Mary] testified that at the time of his death [Edwards] was wearing a gray fabric belt supplied to him by [Domino's].
>
> 13. The property record of [Edwards'] personal effects includes one hundred four (104) Domino's Pizza Deal receipts that were on him at the time of the incident.
>
> 14. [Edwards'] Beneficiary testified she is not certain whether settlement has been reached in the actions filed against the other driver for personal injury and death and against [Edwards'] automobile insurer for underinsured motorist benefits.

Appellant's App. at 2-3. Based on those facts, the Single Hearing Member entered an award denying Mary's Application for Adjustment of Claim. Mary appealed that decision to the Board. Following a hearing, the Board affirmed the decision of the Single Hearing Member. Mary now appeals.

DISCUSSION AND DECISION

Mary contends that the Board's ruling is an "incorrect application of the facts to the law[.]" Appellant's Brief at 7. In essence, Mary argues that Edwards' accident arose out of and in the course of his employment because he was acting under the direction and following the instructions of the store owner when Edwards gave a ride to Macklin. We cannot agree.

In challenging the Board's decision, Edwards confronts a stringent standard of review. When we review a decision of the Full Worker's Compensation Board, "we are bound by the factual determinations of the Board and will not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion." Howard v. U.S. Signcrafters, 811 N.E.2d 479, 481 (Ind. Ct. App. 2004). We must disregard all evidence unfavorable to the decision and examine only the evidence and the reasonable inferences

therefrom that support the Board's findings. Id. We will neither reweigh the evidence nor judge the credibility of the witnesses. Id.

The Worker's Compensation Act authorizes the payment of compensation to employees for "personal injury or death by accident arising out of and in the course of the employment." Ind. Code § 22-3-2-2(a). The claimant bears the burden of proving a right to compensation under the Worker's Compensation Act. Ind. Code § 22-3-2-2. An injury "arises out of" employment when a causal nexus exists between the injury sustained and the duties or services performed by the injured employee. Pavese v. Cleaning Solutions, 894 N.E.2d 570, 575 (Ind. 2008). An accident occurs "in the course of" employment when it takes place within the period of employment, at a place where the employee may reasonably be, and while the employee is fulfilling the duties of employment or while engaged in doing something incidental thereto. Id. Both requirements must be met before compensation is awarded, and neither alone is sufficient. Id. The person who seeks worker's compensation benefits bears the burden of proving both elements. Id.

The issue presented in this case is whether Edwards was acting in the course of his employment at the time of the accident. We find the opinion in Keller v. H.P. Wasson & Co., 129 Ind. App. 59, 153 N.E.2d 386 (1958), to be instructive. In that case, an employer assisted employees in locating ride-share partners during a transportation strike. Keller participated by giving rides to co-workers. One evening Keller gave rides home to several co-workers and was in an accident before arriving at the last co-worker's home. The worker's compensation board denied Keller's application for benefits. On appeal,

the court found that the plan to share transportation was completely voluntary, no reward or reimbursement was paid by the employer for the use of the cars, and the employer had exercised no control over the automobiles or their owners. Id. at 388. The court held that the injury sustained in the accident was not compensable under the Worker's Compensation Act because the accident did not arise out of or in the course of Keller's employment. Id.

Here, too, the evidence most favorable to the Board's ruling supports the Board's decision. Edwards was scheduled to and did work on the night of August 19. Macklin was not scheduled to work and did not clock in or out. After closing the store, Edwards left the store in his own vehicle and gave Macklin a ride. Edwards had given Macklin rides to and from the store before Macklin was hired as a banner shaker and since his hire. Gronemann, the owner of the store, had also occasionally given Macklin rides to and from the store. But Gronemann had not instructed Edwards to give rides to Macklin, nor were rides to and from the store a condition or benefit of Macklin's employment. The owner's mere acquiescence in Edwards' providing transportation to Macklin did not make such transportation an employment benefit, nor did it constitute control or direction of that activity by Domino's. See Keller, 153 N.E.2d at 388. The facts support the Board's conclusion that Edwards' accident did not arise out of or in the course of his employment.

Still, Mary argues that Edwards was following the owner's instructions or past practices when he gave Macklin a ride home. She also contends that providing transportation to Macklin was a condition of Macklin's employment. Again, the

evidence most favorable to the Board's determination does not support those arguments. Mary's contentions amount to a request that we reweigh the evidence, which we cannot do. Howard, 811 N.E.2d at 481. Mary has not shown that the Board erred when it denied her Application for an Adjustment of Claim.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.