STATE OF MICHIGAN

COURT OF APPEALS

BILLY C. BROWN,

Plaintiff-Appellant,

v

A.J. BUDRES SAWMILL, INC., and MICHIGAN ASSOCIATION OF TIMBERMEN,

Defendants-Appellees.

UNPUBLISHED
May 20, 1997

No. 191552
WCAC
LC No. 93-000118

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals a December 2, 1994 decision of the Worker's Compensation Appellate Commission (WCAC) which reversed a magistrate's award of benefits on grounds that plaintiff's injury did not arise out of and in the course of plaintiff's employment. We reverse and remand for further proceedings.

Plaintiff worked as a timber buyer, a job which required traveling throughout the state to locate suitable timber. He worked out of an office at his home in Coldwater, Michigan, with no set hours, although he estimated that he usually worked from 6:00 a.m. to 6:00 p.m., including the time he spent doing paperwork at home. Typically, plaintiff would receive information about available timber from "spotters" and then make arrangements with the landowner to inspect the timber and purchase it for defendant sawmill.

In addition to paying plaintiff a weekly "retainer" fee and a commission on timber purchases, the sawmill also reimbursed plaintiff for his travel expenses. Apparently, plaintiff's own truck was his main source of transportation on the job. On some occasions, he also used his own snowmobile to inspect timber in heavy snow. He testified that the sawmill owner was well aware of his use of his snowmobile to "cruise" timber on the job, and that on at least one occasion, the sawmill owner actually rode with him on the snowmobile to look at some timber.

According to plaintiff, the sawmill owner compensated him for his snowmobile expenses indirectly by buying him lunch to cover the cost of snowmobile fuel or by adding extra mileage to his travel expense reimbursement. Plaintiff acknowledged that he purchased the snowmobile in the mid 1970s and that it was initially used by his family for recreational purposes, but he explained that after the 1970s the snowmobile had only been used for his timber inspection work.

Plaintiff testified that he became a "salaried" employee of the sawmill in October of 1987, and that he began purchasing timber exclusively for A.J. Budres Sawmill at that time.

On the morning of December 31, 1987, plaintiff injured his right ankle and/or foot while riding his snowmobile during an initial "warm-up run" prior to traveling to Allegan County to inspect some timber. He had arranged to meet a spotter at 9:15 or 9:30 a.m. that morning, at a location that was approximately a one-hour drive from plaintiff's home. Because the spotter had warned him that there was heavy snowfall in the area of the timber, plaintiff decided to tow his snowmobile to the site for use during the inspection.

Plaintiff explained that the snowmobile had not been used for about a year at that point. He put fresh fuel in the snowmobile and then took it on a test drive through his neighbor's vacant cornfield at approximately 7:30 a.m. While plaintiff was turning the snowmobile he caught his right foot on something, possibly a cornstalk, injuring his ankle and/or foot.

In the ensuing worker's compensation proceedings, plaintiff's injury and resulting disability were not disputed, but the sawmill denied that plaintiff's injury arose out of and in the course of his employment. The worker's compensation magistrate found that plaintiff was in the course of his employment when he injured himself on his snowmobile and awarded plaintiff benefits, finding that plaintiff was using the snowmobile solely for work purposes and that the sawmill was aware of and reimbursed plaintiff for his use of the snowmobile on the job. The WCAC reversed, relying upon *Owen v Chrysler Corp,* 143 Mich App 182; 371 NW2d 519 (1985) for the proposition that activities that are merely preparatory to work-related travel or the actual commencement of work duties are insufficient to provide the requisite causal nexus between employment and the injury.

On appeal, plaintiff argues that there was a sufficient nexus between his injury and his employment for the injury to arise out of and in the course of the employment. We agree. Although judicial review in worker's compensation cases is largely limited to questions of law, the issue whether an employee's injury arose out of and in the course of employment may be reviewed as a question of law to the extent that the underlying facts are not disputed. *Zarka v Burger King,* 206 Mich App 409, 411; 522 NW2d 650 (1994); *Strausser v Thumb Auto Parts,* 198 Mich App 584, 589; 499 NW2d 430 (1993).

We find the WCAC's reliance upon *Owen, supra,* misplaced in this case. The *Owen* case involved the so-called "special mission" exception to the general rule that injuries sustained while an employee is going to or coming from work are not compensable. The employee in *Owen* intended to use his personal automobile to drive from his home to an airport to take a special business trip, but

suffered a heart attack while attempting to extricate his family truck from a snowbank so he could drive his automobile into his garage for the purpose of loading his suitcases for the trip. This Court held that the employee's heart attack was not work related because the employee had not yet commenced his special mission at the time, but at most, was merely preparing for the eventuality of travel. *Owen, supra* at 186.

In the instant case, it is questionable whether the paradigm of the "special mission" exception to general exclusion of injuries sustained while going to or coming from work has any application at all. Because plaintiff actually works out of an office at his home and his travel to various timber sites is actually part of the work activities for which he is compensated, we doubt that plaintiff's intended trip to Allegan County to inspect timber can be characterized as the kind of mere travel to and from work that is compensable only if an exception to the usual going and coming rule applies.

In any event, even assuming that the "special mission" exception applies to plaintiff's intended trip to Allegan County, we still find *Owen* distinguishable because plaintiff's snowmobile warm-up activities at the time of injury were not merely preparatory to the eventuality of travel to the work site, but preparatory to the eventuality of actually using the snowmobile to perform his timber inspection duties at the site. In this regard, plaintiff's snowmobile test drive might be considered a separate "special mission" in its own right. The fact that plaintiff had to travel to Allegan County before he would use the snowmobile to inspect timber is merely incidental.

Clearly, plaintiff's timber inspection work was the occasion for plaintiff's snowmobile warm-up activities on the morning of December 31, 1987. Regardless of any personal use of the snowmobile in the past, the magistrate correctly noted that plaintiff's undisputed intention on that day was to use the snowmobile to inspect trees for his employer. We disagree with the WCAC's conclusion that it cannot be said that plaintiff's test driving of the snowmobile benefited the employer. To the extent the warm-up activities helped to ensure the snowmobile was ready for timber inspection work after approximately one year of nonuse, and we find nothing in the record to suggest otherwise, the employer derived a benefit from the warm-up activities just as the employer benefited from the actual use of the snowmobile for timber inspection work.

Whether plaintiff had actually begun to undertake his assigned employment duties at the time of his injury or whether he would have been directly or indirectly compensated for the warm-up activities are not controlling issues in this case. Activities which are not part of the employee's required job duties may nevertheless be considered work related to the extent the employer provides the occasion for and is benefited by those activities. See, e.g., *Nemeth v Michigan Building Components,* 390 Mich 734; 213 NW2d 144 (1973); *Strausser, supra.* Under the specific facts presented in this case, we conclude that the activities plaintiff was performing at the time of injury had a sufficient causal nexus to his employment to establish that his injury arose out of and in the course of that employment.

Because the WCAC never reached a number of procedural issues which were raised on appeal below, we do not reinstate the magistrate's award of benefits at this juncture, but instead, we reverse

the order of the WCAC and remand this case to that tribunal for further proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ William B. Murphy
/s/ Michael R. Smolenski