STATE OF MICHIGAN

COURT OF APPEALS

MARY VANVORST, Plaintiff-Appellee,	UNPUBLISHED May 6, 2008
v	No. 278995 WCAC
MAXITROL COMPANY and COMMERCE & INDUSTRY INSURANCE COMPANY, Defendants-Appellants.	LC No. 06-000129

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

PER CURIAM.

Defendants Maxitrol Company and Commerce & Industry Insurance Company appeal by leave granted the June 5, 2007, order of the Worker's Compensation Appellate Commission (WCAC), which affirmed, with modification, a magistrate's grant of benefits to plaintiff for multiple injuries she suffered at work. We affirm. This appeal is being decided without oral argument under MCR 7.214(E).

This case arises out of plaintiff's trip and fall at work during her lunch break on July 15, 2004. When the bell rang to signal the beginning of the lunch break, plaintiff went back to her machine to retrieve her silverware. While doing so, her right foot caught on something that stuck out into the walkway and caused her to fall. As a result of her fall, plaintiff suffered fractures to her right arm, right knee, and left shoulder.

On October 25, 2004, plaintiff was released by her treating surgeon to return to work. However, Maxitrol did not allow plaintiff to work at that time, as her return had to be approved by Maxitrol's office in Detroit. In November 2004, plaintiff was advised by Maxitrol that she could not return to work.

Plaintiff filed for benefits in December 2004. Defendants challenged the petition, in part, on the ground that plaintiff's injuries did not arise out of and in the course of her employment. Following a trial, the magistrate granted plaintiff benefits. The magistrate found that plaintiff was disabled as a result of the injuries she suffered on July 15, 2004. In regard to work-

relatedness, the magistrate found that, under MCL 418.301(3),[1] plaintiff's injury was presumed to have occurred within the course of her employment, and that defendants failed to overcome this presumption because they failed to present any evidence that the "major purpose" of the activity in which plaintiff was engaged was "social or recreational".

Defendants appealed to the WCAC, claiming that the magistrate's application of MCL 418.301(3) was erroneous, and that plaintiff's injury did not arise out of and in the course of her employment. The WCAC concluded that the magistrate's reliance on MCL 418.301(3) was improper. However, the WCAC ultimately affirmed the award of benefits on the ground that, under *Haller v Lansing*, 195 Mich 753; 162 NW 335 (1917), plaintiff's on-premises lunch-time injuries arose out of and in the course of her employment.

On appeal, defendants argue that the WCAC's reliance on *Haller*, *supra*, was misplaced, as that case was decided before the "social or recreational" language was added to MCL 418.301(3). Defendants then go on to argue that plaintiff's lunch was a "social or recreational" activity such that an award of benefits was improper.

Generally speaking, an employee who suffers a "personal injury arising out of and in the course of employment" is entitled to worker's compensation benefits. MCL 418.301(1). The employee bears the burden of proving both a personal injury and a relationship between the injury and the workplace. *Eversman v Concrete Cutting & Breaking*, 463 Mich 86, 92; 614 NW2d 862 (2000).

As an initial matter, to the extent the WCAC held that MCL 418.301(3) is inapplicable because plaintiff was not "going to or from" work, the commission erred. The "social or recreational" test set forth in subsection (3) applies to all worker's compensation cases, regardless of whether the injury occurred while the employee was "going to or from" work. See *Eversman*, *supra* at 95 n 7. Essentially, no injuries are compensable "if the 'major purpose' of the event during which they are incurred is social or recreational." *Nock v M & G Convoy (On Remand)*, 204 Mich App 116, 120-121; 514 NW2d 200 (1994). Despite this error on the part of the WCAC, relief is not warranted.

In our opinion, the addition of the "social or recreational" test to MCL 418.301 does not impact the holding of *Haller*, *supra*. Had *Haller*, *supra*, considered on-premises lunch activities to be primarily "social or recreational" in nature, yet compensable, we would question the continued validity of the decision in light of the subsequent amendments to MCL 418.301. However, we read *Haller*, *supra*, as holding that the employee's on-premises lunch does not sever the employment relationship, and remains an act of employment, or service to the

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[1] MCL 418.301(3) provides, "[a]n employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act. Any cause of action brought for such an injury is not subject to section 131."

employer. *Haller, supra* at 758-760. An act of employment, or service to the employer, is patently not an activity that is primarily "social or recreational."[2] Therefore, *Haller, supra*, did not consider an on-premises lunch to be akin to a social or recreational activity. As a result, contrary to defendant's argument, the addition of the "social or recreational" test to MCL 418.301 does not render *Haller, supra*, a nullity.

In the present case, plaintiff was injured on her lunch period while on her employer's premises and preparing to eat. Under *Haller, supra*, plaintiff's on-premises lunch is considered an act of her employment, or of service to her employer, and is therefore not an activity "the major purpose of which is social or recreational." Consequently, the WCAC's ultimate conclusion that plaintiff's injuries arose out of and in the course of her employment and are compensable was not erroneous.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski

[2] The key distinction between *Haller, supra*, and the cases cited by defendants (*Nock, supra*, and *Eversman, supra*), is that, in *Haller, supra*, the injury occurred on the employer's premises.