STATE OF MICHIGAN

COURT OF APPEALS

JASON R. SALENBIEN,

Plaintiff-Appellant,

and

ALLSTATE INSURANCE COMPANY,

Intervening-Plaintiff,

v

ARROW UNIFORM RENTAL LIMITED PARTNERSHIP,

Defendant-Appellee.

UNPUBLISHED
September 16, 2010

No. 291517
WCAC
LC No. 08-000062

JASON R. SALENBIEN,

Plaintiff,

and

ALLSTATE INSURANCE COMPANY,

Intervening-Plaintiff-Appellant,

v

ARROW UNIFORM RENTAL LIMITED PARTNERSHIP,

Defendant-Appellee.

No. 291543
WCAC
LC No. 08-000062

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

PER CURIAM.

In this workers' compensation case, plaintiff and intervening plaintiff Allstate Insurance Company (plaintiff's no-fault insurance provider) appeal by leave granted from the decision of the Worker's Compensation Appellate Commission (WCAC) that affirmed the magistrate's determination that serious injuries sustained by plaintiff in an automobile accident did not arise out of and in the course of his employment with defendant Arrow Uniform Rental Limited Partnership. Although the WCAC majority applied the correct legal standard, we find the majority erroneously upheld the magistrate's determination that plaintiff's destination after leaving a potential client was speculative because the circumstantial evidence established, by a preponderance of the evidence, that plaintiff was returning to the office when the accident occurred. Accordingly, for the reasons set forth in this opinion, we reverse and remand.

I.

Plaintiff sustained serious injuries in a multi-vehicle accident on highway M-60, which was triggered when a westbound semi-tractor trailer failed to stop for a vehicle making a left turn from westbound M-60 onto a crossroad. The resulting chain-reaction collision forced the semi-tractor trailer across the center line and into plaintiff's vehicle, which was traveling eastbound on M-60. Plaintiff then lost control of his vehicle. The vehicle traveled off the road and collided with an embankment. At the time of the accident, defendant[1] employed plaintiff as a sales consultant. Plaintiff had just completed a sales call on defendant's behalf at the Hayes Lemmertz plant on M-60 in Homer, Michigan, minutes before the accident occurred.

Intervening plaintiff commenced these proceedings to recover from defendant employer the no-fault benefits it paid to plaintiff as a result of the injuries he sustained in the accident and to shift responsibility for the payment of future benefits from it to defendant employer under the Workers' Disability Compensation Act (WDCA), MCL 418.1 *et seq*. Thereafter, plaintiff commenced proceedings to recover worker's compensation benefits for those same injuries.

The magistrate denied the claims of both plaintiff and intervening plaintiff. The magistrate ruled that plaintiff failed to establish by a preponderance of the evidence that his automobile accident and accident-related injuries arose out of and in the course of plaintiff's employment with Arrow. The magistrate acknowledged the general rule that a worker injured on the way to or from work is not entitled to worker's compensation benefits. He then concluded that plaintiff had failed to demonstrate that any of the recognized exceptions to this general rule applied. The magistrate also concluded that plaintiff's injury-related memory loss left to speculation plaintiff's destination after he left the Hayes Lemmertz plant and, consequently, whether plaintiff was working at the time of his accident. The magistrate then ruled that speculation could not support an award of benefits.

In a 2-to-1 decision, the WCAC affirmed the decision of the magistrate. The majority acknowledged that, in prior decisions, the WCAC had found injuries sustained while an employee was traveling to be compensable so long as the travel was an "integral" component of

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[1] Defendant rents uniforms to various employers and picks up and cleans the rented uniforms once soiled.

the employee's job. The majority also acknowledged that in those prior cases the employees had been injured while actually performing their respective jobs. Conversely, in this case, according to the majority, plaintiff failed to establish whether he was working at the time of his accident:

> [Plaintiff] failed to establish whether or not he was working at the time of his accident. [Plaintiff] has no memory of whether he was working or not at the time of the accident. He may have been on his way to the office after a customer call. He may have been on his way home. He may have been on his way to a third undisclosed location.
>
> While there was circumstantial evidence that [plaintiff] was working when the accident occurred, the magistrate did not accept the testimony. There was also evidence that suggested the plaintiff was not performing the task of bringing an item (a smock) back to the office when the accident occurred. The magistrate specifically found against the plaintiff's speculative version of events.
>
> Regardless of whether travel injuries are compensable, a plaintiff must establish that the travel is related to the work. The plaintiff was unable to convince the magistrate his travel at the time of the accident was related to his work in any way. Because the plaintiff failed to establish factually, that his injury arose out of and in the cause of employment, we affirm the denial of benefits.

II.

Section 301(1) of the WDCA provides that "[a]n employee, who receives a personal injury *arising out of and in the course* of employment by an employer who is subject to this act at the time of injury, shall be paid compensation as provided in this act." MCL 418.301(1)(emphasis added). At issue in this matter is whether the injuries sustained by plaintiff in the July 26, 2006 automobile accident arose out of and in the course of his employment with defendant. Whether the injuries of an employee arose out of and in the course of his employment presents a question of law if the facts are not in dispute; otherwise, such issues present mixed questions of fact and law. *Koschay v Barnett Pontiac, Inc*, 386 Mich 223, 225; 191 NW2d 334 (1971); *Zarka v Burger King*, 206 Mich App 409, 411; 522 NW2d 650 (1994).

This Court exercises de novo review of questions of law resolved in any final order of the WCAC. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 697 n 3; 614 NW2d 607 (2000). A decision of the WCAC is subject to reversal if it is predicated on erroneously legal reasoning or the wrong legal framework. *Ross v Modern Mirror & Glass Co*, 268 Mich App 558, 561; 710 NW2d 59 (2005). This Court reviews the factual findings of the WCAC under the "any evidence" standard. If there is any evidence supporting the WCAC's factual findings, then this Court must treat those findings as conclusive. *Id*.

Intervening plaintiff argues that the WCAC majority erroneously focused on plaintiff's destination at the time of the accident. They argue that plaintiff's destination was irrelevant to the question whether the accident arose out of and in the course of his employment with defendant. Intervening plaintiff asserts that where travel to and from customer and potential costumer locations was indisputably an integral part of plaintiff's job, and plaintiff suffered injuries in a motor vehicle accident after leaving a potential customer's location, as a matter of

law, plaintiff's accident arose out of and in the course of his employment regardless of whether he was heading home or to the office. Intervening plaintiff further asserts that the WCAC majority erroneously construed the "integral part of the job" concept as requiring, in addition, a factual finding by the magistrate that plaintiff was working at the time of the accident. Both intervening plaintiff and plaintiff further assert that even if it was material whether plaintiff's destination at the time of the accident was his home, the office, or some third destination, the majority erred when it adopted the magistrate's finding that the question of plaintiff's destination at the time of the accident could only be resolved through an exercise in speculation because unrebutted, competent evidence indicated that plaintiff did, in fact, intend to return to the sales office following his sales call.

A.

Generally, injuries sustained while the worker is traveling to or from work, and off the work premises, are not compensable. *Thomas v Certified Refrigeration, Inc*, 392 Mich 623; 221 NW2d 378 (1974); Welch & Royal, Worker's Compensation in Michigan: Law and Practice (5th ed), § 5.2, p 5-2. As with most general rules, however, there are exceptions to the rule. *Camburn v Northwest School Dist (After Remand)*, 459 Mich 471, 478; 592 NW2d 46 (1999); Welch & Royal, Worker's Compensation in Michigan: Law and Practice (5th ed), § 5.2, p 5-2. The WCAC has recognized such an exception where travel constitutes an integral part of the worker's job duties such that the ordinary hazards of travel are to be considered work-related hazards. *Naski v Contempo Kitchens, Inc*, 2007 ACO 78, *3; *Martin v Mutual of Detroit Ins Co*, 2004 ACO 74, *7. We accord great weight to the administrative interpretation of the WDCA unless that interpretation is clearly wrong. *Hoste v Shanty Creek Mgt, Inc*, 459 Mich 561, 569; 592 NW2d 360 (1999).

In *Martin*, the defendant insurance company employed the plaintiff as a debit route insurance salesman. 2004 ACO 74, *1. The plaintiff's regular job duties included selling life insurance and traveling from client to client on a regular schedule to collect premiums. 2004 ACO 74, *6-7. The plaintiff sustained injury when, upon arriving at the destination of a customer's residence and stepping out of his vehicle in order to collect the premium from the customer, the plaintiff slipped on ice that had formed on the street. 2004 ACO 74, *7. The WCAC concluded that the plaintiff's injury was compensable:

> [T]he claimant before us is required to travel as an integral part of his job duties. In such circumstances the ordinary hazards associated with travel are considered work related hazards. As a result, his slipping on the ice exiting the car at the location of his customer is an injury that arises out of and in the course of his employment. [2004 ACO 74, *7 (footnote omitted).]

In *Naski*, the defendant employer manufactured and installed kitchen and bathroom countertops. The defendant employed the plaintiff as a "measurer." The largest part of the plaintiff's job involved traveling to customers' homes to measure for the installation of countertops. The plaintiff sustained injuries in a motor vehicle accident while traveling from his home to a customer's home. 2007 ACO 78, *1. The WCAC affirmed the magistrate's conclusion that the plaintiff's injury occurred while he was performing a work duty, explaining:

> The record establishes that traveling to the homes of customers was the primary part of Mr. Naski's work duties. We . . . affirm the magistrate . . . because we believe travel to customers' homes was a primary mission of his employment, and therefore an integral part of his job duties. [2007 ACO 78, * 3 (footnote omitted).]

The WCAC majority in the present case acknowledged this travel-as-an-integral-component exception, but found that it did not apply in this case. The majority observed that the exception applied only where the employee was actually performing his or her job at the time of the injury. The majority then agreed with the magistrate that plaintiff had failed to establish whether he was engaged in work-related travel at the time of his accident. Intervening plaintiff complains that the WCAC majority misapplied the *Martin-Naski* exception. According to intervening plaintiff, "[i]f motor vehicle travel to and from customer location is, indeed, established to have been an 'integral part' of the plaintiff's job, and the plaintiff was injured while so traveling *in conjunction with a work-related customer visit*, then by definition, the plaintiff 'was working at the time of his accident' regardless of whether he was just arriving or just leaving the customer's location."

Intervening plaintiff applies the *Martin-Naski* exception too broadly. Neither *Martin* nor *Naski* expressly speaks to compensability for an injury sustained during travel from a customer location. Rather, the scope of those decisions is limited to circumstances involving injuries sustained during travel to a customer's location. An extension of the *Martin-Naski* exception to travel from a customer's location regardless of employee's intended destination after leaving the customer's location is inconsistent with the notion that there must be a nexus between work and injury in order to impose liability under the WDCA.

Generally, for an injury to be compensable under the WDCA, there must be a sufficient nexus between the employment and the injury so that is may be said that the injury was a circumstance of the employment. *Thomas v Certified Refrigeration, Inc*, 392 Mich 623, 632, 635; 221 NW2d 378 (1974); *Bowman v R L Coolsaet Constr Co (On Remand)*, 275 Mich App 188, 191; 738 NW2d 260 (2007); *Thomas v Staff Builders Health Care*, 168 Mich App 127, 130; 424 NW2d 13 (1988). This nexus exists where the circumstances of employment place the employee where he was when he was accidentally injured. *Thomas*, 392 Mich at 631-632. Conversely, if a personal purpose is so great as to dwarf the business portion of the trip, then it can no longer be said that the trip is a circumstance of employment. *Id.* at 635.

Both *Martin* and *Naski* involved injuries sustained en route to a client of the employer. The trips made by the plaintiffs in *Martin* and *Naski* were a circumstance of their employment because their travel was for the purpose of meeting clients and performing business related tasks, i.e., collecting insurance premiums and measuring for countertop fabrication and installation, respectively. The purpose of the travel at the time of injury in both *Martin* and *Naski* was purely a business purpose, and therefore, when injury occurred on the way to a client's location there was a clear nexus between employment duties and injury, such that the injuries could be said to have been a circumstance of the employment. *Thomas*, 392 Mich at 632; *Bowman*, 275 Mich App at 191; *Thomas,* 168 Mich App at 130.

In this case, however, unlike in *Martin* and *Naski*, plaintiff had met with the prospective client and was injured in an accident that occurred after he had left the client's premises.

Although it is clear from the evidence adduced at the hearing before the magistrate that plaintiff's travel was an integral part of plaintiff's sales job, and that plaintiff would not have been traveling on M-60 at the time of the accident but for having completed his sales meeting at Hayes Lemmertz, it is also clear that plaintiff had accomplished the purpose of his meeting and had left the Hayes Lemmertz premises and was en route to a new destination. If that destination was his home, then such a trip would be deemed personal travel. Consequently, the nexus between employment duties and injury would have ended once plaintiff left the premises of Hayes Lemmertz. In other words, at the time of the accident, plaintiff's circumstances would have been no different than an employee injured on the way home from a fixed place of business, and he would have been exposed to no greater traffic risks than any worker was be exposed to during a drive home. Generally, an employer receives no special benefits from an employee's travel from work. *Bowman*, 275 Mich App at 191. Under such circumstances, the nexus between employment and injury required for compensation under the WDCA would not be present. Therefore, plaintiff's destination was relevant for a determination as to whether he is entitled to benefits under that Act. Contrary to the assertions of intervening plaintiff, the WCAC properly examined plaintiff's destination at the time of the accident to determine whether his injuries were compensable under the WDCA. A non-work-related destination at the time of the accident would remove plaintiff's injuries from the scope of the WDCA, while a work-related destination would bring his injuries within the ambit of the WDCA.

B.

However, even though we conclude that the WCAC applied the proper legal theory to this action, we also conclude that plaintiff and intervening plaintiff correctly assert that the WCAC majority erroneously determined that plaintiff failed to demonstrate that his travel at the time of the accident was work-related.

The record conclusively establishes that plaintiff has no memory of his intended destination after leaving Hayes Lemmertz. He did not tell defendant's vice president of sales or branch service manager of his intended destination upon leaving Hayes Lemmertz. The human resources manager of Hayes Lemmertz did not recall whether plaintiff told her of his intended destination upon leaving the plant. The route plaintiff traveled at the time of the accident could have led him to his office or his home. If this was the only evidence available to the magistrate and the WCAC then the conclusion that plaintiff had failed to show that his destination at the time of the accident was a work-related destination would be supported under the "any competent" evidence standard. However, our review of the record reveals that this was not the only evidence presented on this issue. Rather, there was significant circumstantial evidence that plaintiff's destination at the time of the accident was defendant's Jackson office, where he intended to perform tasks in furtherance of defendant's business. A friend of plaintiff and a cousin both testified that approximately 1½ hours before plaintiff's accident, plaintiff informed each that he intended to return to the office before returning home for the day. Plaintiff testified that it was his "habit, routine and practice" that he would return to the office at the end of the day to clear his head, to print maps for the next day's sales calls, to update his database and sales logics, to review his appointments for the following day and to prepare interoffice mail. Additionally, defendant's vice president of sales testified that it would not have been unusual for plaintiff to return to the office following a sales call and stay after the 5:00 p.m. closing time of the office.

In light of this circumstantial evidence and the magistrate's finding that plaintiff's friend and his cousin provided "reliab[le]" testimony, the majority's conclusion that plaintiff had failed to establish by a preponderance of the evidence that his destination at the time of the accident was work-related is not supported under the any competent evidence standard. Despite the fact that plaintiff informed both the friend and cousin of his intent to return to the office after leaving Hayes Lemmertz and despite the fact that plaintiff provided this information less than two hours before the accident, according to the WCAC majority, essentially because plaintiff did not announce as he was leaving Hayes Lemmertz that he was returning to the office or tell a superior of his intent to return to the office, plaintiff's destination could not be ascertained as plaintiff could have changed his mind about his destination during the two hours that followed his expression of his intent to return to the office. Such reasoning reflects an exercise in speculation, which may not support a compensation determination. See e.g., *Mansfield v Enterprise Brass Works Corp*, 97 Mich App 736, 742; 295 NW2d 851 (1980). Conversely, we note that contrary to the majority finding of the WCAC, there is no evidence in the record from which it may be inferred that plaintiff was no longer intending to act in a manner consistent with his prior expression of intent as related by both plaintiff's friend and his cousin. Absent evidence from which it could be inferred that plaintiff changed his mind prior to returning to the office as he had previously stated to two people, we must find that the WCAC majority's speculative conclusion to the contrary is not supported by any competent evidence.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Richard A. Bandstra