[Cite as *West v. Lukjan Metals Prods., Inc.*, 2009-Ohio-5761.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

RAYMOND A. WEST, JR.,	:	**O P I N I O N**
Appellee,	:	**CASE NO. 2009-A-0014**
- vs -	:	
LUKJAN METALS PRODUCTS, INC., et al.,	:	
Appellants.	:	

Administrative Appeal from the Ashtabula County Court of Common Pleas, Case No. 2007 CV 1251.

Judgment: Affirmed.

Walter Kaufmann, Boyd, Rummell, Carach & Curry Co., L.P.A., Huntington Bank Building, 4th Floor, P.O. Box 6565, Youngstown, OH 44501-6565 (For Appellee).

John F. Burke, III, Mansour, Gavin, Gerlack & Manos, 2150 Illuminating Building, 55 Public Square, Cleveland, OH 44113-1994 (For Appellant-Lukjan Metals Products, Inc.).

Richard Cordray, Ohio Attorney General, State Office Tower, 30 East Broad Street, Columbus, OH 43215-3428. (For Appellant-Marsha P. Ryan, Administrator, Bureau of Workers' Compenation).

Stuart A. Saferin, Assistant Attorney General, State Office Tower, 11th Floor, 615 West Superior Avenue, Cleveland, OH 44113. (For Appellant-Marsha P. Ryan, Administrator, Bureau of Workers' Compenation).

DIANE V. GRENDELL, J.

{¶1} Defendants-appellants, Lukjan Metals Products, Inc., et al., appeal the Judgment Entry of the Ashtabula County Court of Common Pleas, in which the trial court granted plaintiff-appellee, Raymond West, Jr.'s, Motion for Summary Judgment and denied Lukjan's Motion for Summary Judgment. For the following reasons, we affirm the decision of the trial court.

{¶2} West, Mary Ann Runnion, Deborah Cunningham, and Karen Fields were employees at the Lukjan plant in Conneaut, Ohio. They were sent to North Carolina, on a one-week temporary assignment, to assist with the training of the North Carolina Lukjan employees and to complete production runs at the North Carolina Lukjan plant. Prior to this trip, West had been on three or four similar week-long trips to assist at the North Carolina plant.

{¶3} West, Runnion, Cunningham, and Fields departed Conneaut on February 19, 2007, in a rental car, rented and paid for by Lukjan. They were paid for travel time until they reached their destination in North Carolina: a rental house, chosen and paid for by Lujkan, for West, the only male employee on the trip; and a motel for the remaining three female employees, also reserved and paid for by Lukjan. The employees were required by Lukjan to stay in these accommodations, located approximately 10 to 15 minutes away from the plant, during their week long assignment in North Carolina.

{¶4} In addition to the lodging expenses, Lukjan also paid for all meals for the four employees. During the stay in North Carolina, in addition to driving the rental vehicle, Runnion kept track of all payroll information, accounting for the hours of the four

employees, and she was to provide the payroll information to Lukjan upon return to Ohio.

{¶5} On February 23, 2007, after working at the North Carolina Lukjan plant, West was involved in a motor vehicle accident. West was in the front passenger seat of the vehicle rented by Lukjan, driven by Runnion, and Cunningham and Fields were in the backseat of the vehicle. They were traveling from the Lukjan plant to the rental house. West sustained injuries in the car accident, which was later determined to be the fault of the other vehicle.

{¶6} West was originally granted participation in the Workers' Compensation Fund. After an appeal by Lukjan, West received an Order from the District Hearing Officer stating that he was denied participation in the Ohio Workers' Compensation Fund for injuries sustained in the car accident. West then filed a Workers' Compensation Appeal with the Industrial Commission of Ohio. At the hearing, the Staff Hearing Officer found that West "did not sustain a compensable injury as defined under Ohio Workers' Compensation Laws and the relevant case law."

{¶7} West subsequently appealed the Workers' Compensation Decision pursuant to R.C. 4123.512 to the Ashtabula County Court of Common Pleas. His Complaint contended that he was entitled to participate in the Workers' Compensation Fund. Both Lukjan and the Bureau of Workers' Compensation (BWC) answered and denied the material allegations of the complaint.

{¶8} On November 26, 2008, West filed a Motion for Summary Judgment. Additionally, Lukjan filed a Motion for Summary Judgment on December 1, 2008. The trial court subsequently granted West's Motion for Summary Judgment and denied Lukjan's Motion, finding that "West is entitled to participate in the Worker's

Compensation Fund for the injuries sustained in the motor vehicle accident." Further, the trial court found that West was in the "zone of employment" when his accident occurred and the injuries were received in the course of and arising out of West's employment with Lukjan.

{¶9} Lukjan timely appeals and raises the following assignments of error:

{¶10} "[1.] The trial court erred when it granted Plaintiff-Appellee's motion for summary judgment.

{¶11} "[2.] The trial court erred when it denied Defendant-Appellant Lukjan Metals Products, Inc.'s motion for summary judgment."

{¶12} Since both assignments of error relate to the granting of summary judgment, we will address both together.

{¶13} Lukjan argues that it was entitled to judgment as a matter of law and that reasonable minds could only come to one conclusion, that being adverse to West. We disagree.

{¶14} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows "that there is no genuine issue as to any material fact" to be litigated, (2) "the moving party is entitled to judgment as a matter of law," and (3) "it appears from the evidence *** that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence *** construed most strongly in the party's favor." Civ.R. 56(C).

{¶15} A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co*., 77 Ohio St.3d 102, 105, 1996-Ohio-336. A de novo review requires the appellate court to

conduct an independent review of the evidence before the trial court without deference to the trial court's decision. *Brown v. Cty. Commrs. of Scioto Cty.* (1993), 87 Ohio App.3d 704, 711 (citation omitted).

{¶16} "To qualify for workers' compensation, an employee must suffer an injury 'in the course of, and arising out of,' his employment. *** An 'injury' is limited to those injuries that are received 'in the course of' *and* 'arising out of' the injured employee's employment." *Rantamaki v. Conrad*, 11th Dist. No. 2005-A-0040, 2006-Ohio-1010, at ¶8 (citation omitted) (emphasis sic). "The phrase 'in the course of employment' limits compensable injuries to those sustained by an employee while performing a required duty in the employer's service. *Indus. Comm. v. Gintert* (1934), 128 Ohio St. 129, 133-134 ***. 'To be entitled to workmen's compensation, a workman need not necessarily be injured in the actual performance of work for his employer.' *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693, ***, [at] paragraph three of the syllabus. An injury is compensable if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business. *Kohlmayer v. Keller* (1970), 24 Ohio St.2d 10, 12." *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117, 120, 1998-Ohio-455.

{¶17} Lukjan contends that West's claim was barred by the "coming-and-going" rule. "The coming-and-going rule is a tool used to determine whether an injury suffered by an employee in a traffic accident occurs 'in the course of' and 'arises out of' the employment relationship so as to constitute a compensable injury." Id. at 119. Lukjan cites to *MTD Products, Inc. v. Robatin* (1991), 61 Ohio St.3d 66, which states, "[a]s a general rule, an employee with a fixed place of employment, who is injured while traveling to or from his place of employment, is not entitled to participate in the Workers'

Compensation Fund because the requisite causal connection between the injury and the employment does not exist." Id. at 68 (citation omitted).

{¶18} There are several exceptions to the general rule prohibiting compensation for an employee injured in her commute to work, including: "1) the injury occurs within the 'zone of employment' ***; 2) the employment creates a 'special hazard' ***; or 3) there is a causal connection between the employee's injury and employment based on the 'totality of the circumstances' surrounding the accident." *Weiss v. Univ. Hosps. of Cleveland* (2000), 137 Ohio App.3d 425, 430-431, citing *Robatin*, 61 Ohio St.3d at 68-70.

{¶19} West contends that he meets the requirements of the "zone of employment" exception. We agree. *Robatin* states that "[t]he general rule *** does not operate as a complete bar to an employee who is injured commuting to and from work if the injury occurs within the 'zone of employment.'" 61 Ohio St.3d at 68 (citation omitted). A critical inquiry of the "zone of employment" analysis is whether the employer had control over the area where the accident occurred. Id. at 69.

{¶20} In the present case, the fact that the accident happened on a public street and not on Lukjan's property does not end the inquiry. See *Baughman v. Eaton Corp*. (1980), 62 Ohio St.2d 62, 63 (Finding the appellee eligible for worker's compensation when "[a]ppellee parked his automobile in the only employer parking lot then available to him free of charge[,] [h]is injuries occurred on the public street as he proceeded, without deviation, toward the plant entrance prior to the commencement of his shift. *** [A]ppellee could not reach the plant entrance without crossing the public street.").

{¶21} West's accident occurred in a car, rented by Lukjan and driven by a Lukjan employee, traveling from the Lukjan plant to the temporary residence where

West was required to stay, a place chosen and paid for by Lukjan. Deposition testimony indicates that West had previously asked to drive to the North Carolina Lukjan plant on his own, in his own vehicle; however, Lukjan had refused and required him to travel in the Lukjan rented vehicle with the group. West had no other means of traveling between the Lukjan plant and the temporary residence, other than the vehicle furnished by Lukjan. Lukjan had a great deal of control over the accommodations, work schedule, meals, vehicle, and driver of the vehicle. See *Weiss,* 137 Ohio App.3d at 431 ("the control element can be satisfied if, because of conditions created by the employer in the 'zone of employment', the employee has no choice as to how to travel to his or her employment"); *Gonzalez v. Admr., Bur. of Workers' Comp*., 7th Dist. No. 03 MA 86, 2004-Ohio-1562, at ¶15 ("[c]ontrol can be established either over the physical location or by showing that because of conditions created by the employer, the employee has no choice as to how to travel to his or her employment"); *Meszaros v. Legal News Publishing Co.* (2000), 138 Ohio App.3d 645, 648 (finding that an injury occurred within the zone of employment where the employee "had no choice" as to where to park).

{¶22} Accordingly, West was in the "zone of employment" at the time of the accident.[1]

{¶23} Lukjan also contends that "[a]pplication of the *Lord* factors to the present situation does not support [West's] right to participate in the Ohio workers' compensation fund." Lukjan argues that a sufficient causal connection between the injury and employment did not exist to justify West's participation in the Fund.

1. We note that Lukjan and West cite to conflicting evidence regarding whether or not the four Lukjan employees were being paid at the time of the accident; however, the pay issue has little influence on our determination. "The 'zone of employment' rule 'has been applied before, during and after an employee's work hours.'" *Fitch v. Ameritech Corp*., 10th Dist. No. 05AP-1277, 2007-Ohio-2725, at ¶17 quoting *Remer v. Conrad*, 153 Ohio App.3d 507, 2003-Ohio-4096, at ¶11.

{¶24} We disagree. West would qualify for the Workers' Compensation under the "totality of circumstances" test. "While not dispositive of cause, the following factors [(the *Lord* Factors)] are relevant to the inquiry: '(1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident.'" *Rantamaki,* 2006-Ohio-1010, at ¶¶10-11, quoting *Lord v. Daugherty* (1981), 66 Ohio St.2d 441, at the syllabus. "[W]hen applying the analysis set forth above, a reviewing court must examine the separate and distinct facts of each case. *** This is because workers' compensation cases are, to a large extent, very fact specific. As such, no one test or analysis can be said to apply to each and every factual possibility. Nor can only one factor be considered controlling. Rather, a flexible and analytically sound approach to these cases is preferable. Otherwise, the application of hard and fast rules can lead to unsound and unfair results." *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 280.

{¶25} Based on the discussion above, Lukjan had control over the scene of the accident. Furthermore, Lukjan received an economic benefit from the cost savings associated with requiring their workers to travel together in one vehicle. Additionally, the accident was in proximity to the Lukjan North Carolina plant; the vehicle was en route from the plant to West's lodging, which was located a reasonable distance from the plant, when the accident occurred.

{¶26} When considering the totality of the facts and circumstances of this case, we find that the test set forth in *Lord* has been met. Thus, West has shown a sufficient causal connection between the injury and his employment to warrant a conclusion that the injury was in the course of and arose out of his employment.

{¶27} Given the evidence in the record, we hold there is no genuine issue of material fact relating to whether West's injuries occurred "in the course of, and arising out of" his employment. Further, there is no genuine issue of material fact as to whether West was within the "zone of employment" at the time of his injury, and therefore, he is entitled to participate in the Workers' Compensation Fund. Consequently, West was entitled to judgment as a matter of law.

{¶28} For the foregoing reasons, the Judgment Entry of the Ashtabula County Court of Common Pleas, granting West's Motion for Summary Judgment, is affirmed. Costs to be taxed against appellants.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.