IN THE COMMONWEALTH COURT OF PENNSYLVANIA

One Source Staffing, Petitioner	:	
v.	:	No. 19 C.D. 2011
Workers' Compensation Appeal Board (Smedley), Respondent	:	Submitted: May 27, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY FILED: July 8, 2011

One Source Staffing (Employer) petitions for review of the December 16, 2010, order of the Workers' Compensation Appeal Board (Board) affirming the Workers' Compensation Judge's (WCJ) remand decision and order granting the claim petition filed by Vern Smedley (Claimant).[1] We affirm.

[1] There are six related appeals before this Court that are to be decided seriatim. Two of the related appeals, including the instant matter, involve this Employer as the Petitioner and four involve Employer Flexible Staffing Solutions as the Petitioner. See One Source Staffing v. Workers' Compensation Appeal Board (Andre Bailey) (Pa. Cmwlth., No. 18 C.D. 2011, filed July 8, 2011); Flexible Staffing Solutions v. Workers' Compensation Appeal Board (Antoine Cunningham) (Pa. Cmwlth., No. 20 C.D. 2011, filed July 8, 2011); Flexible Staffing Solutions v. Workers' Compensation Appeal Board (Raheem Johnson) (Pa. Cmwlth., No. 21 C.D. 2011, filed

(Continued....)

On or about December 18, 2007, Claimant filed a claim petition seeking workers' compensation benefits alleging that he sustained a work-related injury on December 13, 2007, while a passenger in a van transporting several workers from a job site. The van slipped off the road into a ditch due to poor weather conditions. Employer filed an answer denying all materials allegations contained therein. Proceedings before the WCJ ensued at which time Employer asserted that Claimant was precluded from receiving workers' compensation benefits pursuant to the Ride Share Act.

The Ride Share Act operates to prevent claimants from receiving workers' compensation benefits when they are merely commuting to and from work. Bensing v. Workers' Compensation Appeal Board (James D. Morrissey,

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July 8, 2011); Flexible Staffing Solutions v. Workers' Compensation Appeal Board (Allen Leonard) (Pa. Cmwlth., No. 44 C.D. 2011, filed July 8, 2011); and Flexible Staffing Solutions v. Workers' Compensation Appeal Board (Stephen Hollman) (Pa. Cmwlth., No. 490 C.D. 2011, filed July 8, 2011).

Initially, the six separate claim petitions filed by Claimants were consolidated before the WCJ for disposition. However, on April 4, 2008, the parties agreed to bifurcate the six claims in an effort to first determine the applicability of what is commonly referred to as the Ride Share Act, Act of December 14, 1982, P.L. 1211, 55 P.S. §§695.1-695.9, to the situation presented by the various claim petitions. In all but one of these six related matters, each Claimant alleges that he was injured on September 14, 2007, when the Employer owned van he was riding to work was involved in a collision with another vehicle. In the matter involving this Claimant Vern Smedley, the alleged injury occurred on December 13, 2007, as a result of the Employer owned van in which Claimant was riding slipped off the road into a ditch due to poor weather conditions. Notwithstanding the differing injury dates, the same issues are presented in all six matters currently before this Court for disposition. In addition, while two of these appeals involve One Source Staffing as the Petitioner, the van transportation utilized by Claimants to get to the job site and back was provided by Flexible Staffing Solutions. See April 24, 2008 Deposition Testimony of Jeff Weisenberger, Claims Manager for Flexible Staffing Solutions, at 8. Thus, it was Mr. Weisenberger's opinions that all six of these claims should have been brought against Flexible Staffing Solutions and not One Source Staffing. Id. The nature of Flexible Staffing Solutions' business is placing workers with clients that need labor. Id. at 13.

Inc.), 830 A.2d 1075, 1080 (Pa. Cmwlth. 2003). The pertinent provisions of the Ride Share Act are Sections 1 and 3. Section 1 defines "ridesharing arrangement" as:

> (1) The transportation of not more than 15 passengers where such transportation is incidental to another purpose of the driver who is not engaged in transportation as a business. The term shall include ridesharing arrangements commonly known as carpools and vanpools, used in the transportation of employees to or from their place of employment.
>
> (2) The transportation of employees to or from their place of employment in a motor vehicle owned or operated by their employer.
>
> (3) The transportation of persons in a vehicle designed to hold no more than 15 people and owned or operated by a public agency or nonprofit organization for that agency's clientele or for a program sponsored by the agency.

55 P.S. §695.1. Section 3, entitled "Workmen's compensation act not applicable to ridesharing" provides as follows:

> The act of June 2, 1915 (P.L. 736, No. 338), known as "The Pennsylvania Workmen's Compensation Act," shall not apply to a passenger injured while participating in a ridesharing arrangement between such passenger's place of residence and place of employment. "The Pennsylvania Workmen's Compensation Act" shall apply to the driver of a company owned or leased vehicle used in a ridesharing arrangement.

55 P.S. §695.3.

The evidence presented to the WCJ consisted of: (1) Claimant's deposition testimony; (2) the deposition testimony of Jeff Weisenberger, Employer's Claims Manager; and (3) the depositions of Claimant's fellow

employees.[2] By interlocutory decision and order circulated September 4, 2008, the WCJ found as follows:

> 2. Given the evidence presented, it is undisputed that Claimant was one of approximately four (4) or five (5) passengers in a van provided by Defendant/Employer, through Propst Transportation. The van was traveling from Process Technologies in Waverly, PA, when it slid off the road, causing Claimant's injury. The transportation and accident occurred after Claimant had been dismissed from work early at Process Technologies due to an impending storm. This transportation was never provided from the employees' houses to their work site. It was provided from Defendant/Employer's designated central pick-up site to off-site jobs. The employees did not have control over the mode of transportation, the course they traveled, or the pick-up and drop-off sites. The employees believed that the transportation was beneficial to them as [it] allowed them to get to the worksite. However, they also all believed that the Defendant/Employer benefited from the transportation agreement because it made money if they made it to work. Likewise, Jeff Weisenberger, Defendant/Employer's claims manager, believed the van transportation system benefited both the employees and Defendant/Employer. Mr. Weisenberger testified: ". . . I think there are some (employees) that can't work somewhere unless it was within walking distance or on a bus route if it wasn't for transportation being provided. It also provides (Defendant/Employer) with a larger pool of people we can send to a particular assignment . . ." (Weisenberger depo at pg 26)[.] Finally, the employees paid either $7.00 per day or $35.00 for a five (5) day workweek to participate in the van program. This charge was deducted from their pay. They were not paid for

[2] These fellow employees are the Claimants in the other five related cases before this Court for disposition.

> their time spent traveling nor did they perform any work for Defendant/Employer while traveling in the van.

September 4, 2008, WCJ Decision at 1-2. Based on the foregoing and this Court's decision in Rite Care Resources v. Workers' Compensation Appeal Board (Davis), 623 A.2d 917 (Pa. Cmwlth. 1993), determining the applicability of the Ride Share Act, the WCJ concluded that the manner in which Claimant was transported does not fall within the commonly accepted notion of van pooling. The WCJ concluded further that since Claimant did not have a fixed place of work, his claim fit within an exception to the "coming and going rule". Accordingly, the WCJ determined that the Ride Sharing Act did not apply in Claimant's case and that Claimant would be permitted to go forward with the presentation of evidence in support of his claim petition.

Thereafter, the parties entered into a joint stipulation to conclude the pending litigation before the WCJ. The parties stipulated that Claimant sustained an injury as a result of an automobile collision while riding in a van to work.[3] The parties further stipulated that Claimant made a full and complete recovery from his injury as of November 20, 2008. However, Employer disputed that Claimant was entitled to workers' compensation benefits asserting that the Ride Share Act applied herein to preclude Claimant from receiving benefits. Thus, the parties further stipulated that a dispute remained as to whether the Ride Share Act applied

[3] We note that the stipulation contained in the certified record and incorporated by the WCJ in this matter is the same stipulation that the other five Claimants who were injured in the separate van accident on September 14, 2007, entered into with Employer. Regardless, the parties do not dispute that this Claimant, Vern Smedley, Jr., was injured on December 13, 2007, as a result of an automobile collision while riding in a van from the job site and that Claimant made a full and complete recovery from his injuries as of November 20, 2008.

to Claimant's claim for benefits. In addition, the joint stipulation specifically set forth that Employer did not stipulate that Claimant met his burden of establishing his right to benefits applicable to the claim petition.

The WCJ circulated a final decision and order on March 11, 2009. Therein, the WCJ approved the joint stipulation and incorporated the same into his final decision as findings of fact along with his prior September 4, 2008, Interlocutory Order. As such, the WCJ upheld his conclusion that the Ride Share Act did not preclude Claimant from receiving workers' compensation benefits and that the exception to the "coming and going rule" applied as Claimant had no fixed place of employment. The WCJ's order reflected the foregoing conclusion but did not specifically grant or deny Claimant's claim petition.

Employer appealed the WCJ's March 11, 2009, decision and order to the Board. In its appeal, Employer argued that the Ride Share Act was applicable and that the WCJ failed to make a finding as to whether Claimant had met his burden of proving his claim for benefits. Upon review, the Board determined that the Ride Share Act was not applicable to this matter and upheld the WCJ's conclusion that the Ride Share Act did not preclude Claimant from receiving workers' compensation benefits. However, the Board pointed out that the parties agreed that they did not stipulate that Claimant had met his burden of establishing his right to benefits applicable to the claim petition. Accordingly, the Board determined that the matter needed to be remanded to the WCJ for findings of fact and conclusions of law specifically stating whether, including how, Claimant met his burden of proof or stating that the claim petition was granted. The Board directed further that if the claim petition was granted, the WCJ was to specifically enumerate the exact period of awarded benefits, the average weekly wage and

corresponding compensation rate and whether Employer was entitled to a suspension or termination of benefits based upon the stipulation between the parties.

On remand, the WCJ did not take any additional evidence and made the following additional relevant finding of fact by decision and order circulated March 15, 2010:

> 5. The deposition testimony for this case, as more fully noted in [finding 2 of] the September 4, 2008, Interlocutory Order, is clear and consistent. This testimony is accepted as fact. Claimant was employed by Defendant/Employer on December 13, 2007. (See: Claimant's depo., pg 4) On December 13, 2007, Claimant was a passenger in the van provided by Defendant/Employer that was involved in the motor vehicle accident. (See: Id., pg's 12-13) Pursuant to the parties' Stipulation, Claimant sustained an injury in the nature of whiplash neck and back as a result of this accident while riding to work. (Stipulation, paragraph #3 &#8) Also pursuant to the parties' Stipulation, Claimant, on November 20, 2008, made a full and complete recovery from this injury. (Stipulation, paragraph #4 & #8)

March 15, 2010, WCJ Decision at 2. The WCJ made the following additional relevant conclusion of law:

> 2. Given the Findings stated in this Decision and the Interlocutory Order, the facts as stated in the parties' Stipulation, and the Analysis set forth in the Interlocutory Order, it is concluded that: (1) Claimant was employed by Defendant/Employer on December 13, 2007; (2) he was traveling in a van provided through the Defendant/Employer to transport him to work; (3) he was injured in the accident in which this van was involved; (4) the injury he sustained is an injury in the nature of whiplash neck and back; (5) the Pennsylvania Ride Share

> Act is inapplicable to Claimant's situation; and (6) Claimant, having no fixed place of employment, fit within an exception to the "coming and going rule" of the Pennsylvania Workers' Compensation System. Accordingly, Claimant met his burden of proof for the Claim Petition and his Petition will be granted. Further, pursuant to the parties' Stipulation, Claimant as of November 20, 2008, made a full and complete recovery from his December 13, 2007, injury. Therefore, it is further concluded that Defendant is entitled to a Termination of Claimant's benefits for his December 13, 2007, work injury as of November 20, 2008. Finally, insofar as Defendant did not provide a Statement of Wages for Claimant, compensation will be awarded at the appropriate rate for the calendar year 2007.

Id. at 2-3. Accordingly, the WCJ granted Claimant's claim petition, awarded workers' compensation benefits at the appropriate weekly rate for calendar year 2007 from December 13, 2007, to November 20, 2008, and terminated Claimant's benefits as of November 20, 2008.

Employer appealed the WCJ's March 15, 2010, decision and order. By decision and order dated December 16, 2010, the Board affirmed the WCJ's decision. This appeal by Employer followed.

Initially, we note that this Court's scope of review is limited to determining whether there has been a violation of constitutional rights, errors of law committed, or a violation of appeal board procedures, and whether necessary findings of fact are supported by substantial evidence. Lehigh County Vo-Tech School v. Workmen's Compensation Appeal Board (Wolfe), 539 Pa. 322, 652 A.2d 797 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mrs. Smith's Frozen Foods v. Workmen's Compensation Appeal Board (Clouser), 539 A.2d 11 (Pa. Cmwlth. 1988).

Herein, Employer presents two issues for review: (1) whether the Ride Share Act applies to the instant matter; and (2) whether the "coming and going rule" precludes Claimant's receipt of workers' compensation benefits.[4]

With respect to the first issue, Employer argues that the Ride Share Act is applicable to this matter because Claimant was participating in a ridesharing arrangement at the time of his injury. Employer contends that this Court's decision in Rite Care is not controlling as the factual findings by the WCJ herein are distinguishable from the facts in Rite Care. Employer argues that this matter is more akin to this Court's decision in Bensing.[5]

In reviewing Employer's arguments, this Court is aware, as we were in Rite Care, that we "must keep in mind that the Workers' Compensation Act[, Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1 - 1041.4, 2501-2708,] is remedial in nature and is intended to benefit the worker; therefore, the Act must be liberally construed to effectuate its humanitarian objectives." Rite Care, 623 A.2d at 920. "Conversely, any restriction of the Act's application should be narrowly and strictly construed where the intent of the Legislature is not clearly expressed." Id.

The facts in Rite Care reveal that the claimant was a certified nursing assistant working for an employer, which provided its employees to convalescent

[4] In the interest of clarity, Employer's issues have been reordered.

[5] Employer also relies upon a decision by the Court of Common Pleas of Lawrence County in Hogue v. Soom, 81 Pa. D. & C. 4th 357 (2007), wherein the common pleas court held that the Workers' Compensation Act did not bar a civil action for injuries suffered by employees in an automobile accident involving an employer's leased van because the van pool provided by the employer qualified as a "ridesharing agreement" under the Ride Share Act. However, decisions by the courts of common pleas are not binding on this Court.

and nursing homes in Pennsylvania and New Jersey. Id. at 918. In order to be assigned to her daily employment, which varied from day-to-day, the claimant reported to the employer's central business location. Id. at 919. Once the claimant received her daily assignment she was driven to the job site in the employer's van. Id. The employer paid the claimant for the hours she worked at the convalescent and nursing homes, but she was not paid for the hours during which she rode in the employer's van. Id. Although the claimant's participation in the van program was entirely voluntary, the system set up by the employer made it inevitable that the claimant would ride in the van to her daily job site. Id.

The claimant was injured in an accident that occurred while she was riding in the employer's van between the location where she reported to work and her job site that day. Id. at 918. Although the employer promptly issued a notice of compensation payable (NCP) providing for total disability benefits, the employer later petitioned for review of the compensation agreement alleging that the NCP was materially incorrect as the claimant was participating in a ridesharing arrangement at the time of her injury. Id. at 919.

Upon review, this Court pointed out that the intention of the Ride Share Act was to encourage employers to provide ridesharing and vanpooling, but only insofar as those terms are commonly understood. Id. at 920. This Court held that under the facts of Rite Care, the "employer's marshaling of its employees at its place of business and subsequent dispersal to various work locations at its convenience and interest does not fall within the commonly-accepted notion of vanpooling." Id. at 920-21. Accordingly, we affirmed the Board's decision and order upholding the WCJ's determination that the Ride Share Act did not apply. Id.

In Bensing, the claimant was employed as a heavy equipment operator for the employer. Bensing, 830 A.2d at 1076. This job required the claimant to work at remote job sites until the job was completed or until the employer told him to go to another location. Id. The employer would often tell the claimant the night before where to report for work the next day. Id. The employer did not reimburse the claimant for any of his travel expenses nor did it provide any kind of transportation. Id.

The claimant was injured in an automobile accident while car pooling with two other employees to a job site. Id. The claimant and the two other employees shared the expenses because they took turns driving. Id. The employer did not require the claimant to participate in the car pool; however, the employer notified the employees who lived near each other that they would be working at the same job site so they would have an opportunity to arrange a car pool with other employees. Id.

Upon review of the denial of the claimant's claim petition, this Court determined that the Ride Share Act precluded the claimant from receiving workers' compensation benefits. Id. at 1080. We pointed out that because the claimant and the two other employees shared expenses and the employer did not reimburse them for their travel expenses, the car-pooling arrangement primarily benefitted the claimant rather than the employer. Id. We pointed out further that because the car pooling arrangement between the claimant and the two other employees was completely voluntary, participating in the car pool was not a special assignment. Id. Therefore, this Court held that the employer would not be liable for any injury sustained by the claimant while car pooling to and from work pursuant to Section 3 of the Ride Share Act, 55 P.S. §695.3.

Given the facts, as found by the WCJ herein, we conclude that this matter is clearly not controlled by this Court's decision in Bensing. There is no evidence to support a finding that Claimant was participating in a car pool with other employees similar to the car pool in Bensing. The claimant in Bensing shared a ride in a private vehicle not owned by the employer and there was no designated central pick-up or drop-off site. The facts in the instant matter are more akin to the facts in Rite Care.

The WCJ found, based on the credible evidence presented, that Claimant was one of four or five passengers in a van provided by Employer to transport its employees to various job sites. Claimant and his co-workers were picked up at Employer's designated central pick-up site and taken to another job site. Employer never provided transportation from its employees' residences to the job site. To the contrary, Employer only provided transportation from its designated central pick-up site to off-site jobs and then from the off-site jobs back to the designated central drop-off site. On the date of the accident in question involving Employer's van, Claimant and his co-workers were being transported from the job site at Process Technologies in Waverly, Pennsylvania, back to the central drop-off site.

Mr. Weisenberger testified that Employer had a van system set up so that an individual who did not have transportation on his own but wished to work for Employer could elect to have transportation provided from Employer's office to the job site and from the job site back to the office. See April 24, 2008, Deposition Testimony of Jeff Weisenberger at 8. Mr. Weisenberger testified that the central pick-up and drop-off site was determined by having a central location

so that all the employees could get on the van at the same time thereby avoiding a lot of wasteful time picking people up at various locations. Id. at 24.

Mr. Weisenberger testified that Claimant and the other employees utilizing the van service could not ask the driver to pick them up or drop them off anywhere but the designated central pick-up and drop-off site. Id. at 22. The van driver had sole control over the operation of the van. Id. In addition, Claimant testified that the van driver would check off the employees' names as they would get on the van to confirm that the employees were in fact on the van. Reproduced Record (R.R.) at 90a.

Claimant and his co-workers believed that the transportation was beneficial to them because it permitted them to get to the job site. However, the evidence deemed credible by the WCJ reveals that the transportation provided by Employer also benefited Employer. Specifically, Claimant and his co-workers each paid $7 per day or $35 per week to be transported by Employer in the van to and from the job site. Claimant testified that he was charged $35 per week regardless of whether he rode the van to a job site the whole five days. R.R. at 88a. This fee was taken directly from Claimant's paycheck.

Most revealing regarding Employer's benefit is the testimony of Mr. Weisenberger that, although he did not believe that Employer made much profit from the van fees and the van transportation was an option, the fact that Employer provided van transportation gave Employer a bigger pool of people to get to and from the assignments that Employer had arranged with clients. See April 24, 2008, Deposition Testimony of Jeff Weisenberger at 19. Mr. Weisenberger testified that he believed the van transportation provided by Employer benefited both Employer and its employees because there are some employees that could not

work at a job site unless it was within walking distance or on a bus route. Id. at 26. It was Mr. Weisenberger's belief that the employees could not work if it was not for the transportation being provided by Employer. Id. Mr. Weisenberger repeated his testimony that Employer's van transportation service also provided Employer with a larger pool of people to send to a particular assignment if there was an especially huge demand for manpower. Id.

Accordingly, we conclude that the WCJ's finding that the Ride Share Act was not applicable because Employer's van transportation was not within the commonly accepted notion of van pooling is supported by substantial evidence.[6] The system set up by Employer made it inevitable that employees who lacked transportation like Claimant and his co-workers would utilize the van service to get to and from their assigned job sites. As in Rite Care, "employer's marshaling of its employees at its place of business and subsequent dispersal to various work locations at its convenience and interest does not fall within the commonly-accepted notion of vanpooling." Rite Care, 623 A.2d at 920-21. As such, the Board did not err in affirming the WCJ's determination that the Ride Share Act did not preclude Claimant from receiving workers' compensation benefits.

In support of the second issue raised herein, Employer argues that the "coming and going rule" precludes Claimant's receipt of workers' compensation benefits. Employer contends that there was no employment contract between

[6] The WCJ, as the ultimate fact finder in workers' compensation cases, has exclusive province over questions of credibility and evidentiary weight, and is free to accept or reject the testimony of any witness in whole or in part. General Electric Co. v. Workmen's Compensation Appeal Board (Valsamaki), 593 A.2d 921 (Pa. Cmwlth.), petition for allowance of appeal denied, 529 Pa. 626, 600 A.2d 541 (1991). Determinations as to witness credibility and evidentiary weight are not subject to appellate review. Hayden v. Workmen's Compensation Appeal Board (Wheeling Pittsburgh Steel Corp.), 479 A.2d 631 (Pa. Cmwlth. 1984).

Claimant and Employer and that contrary to the WCJ's finding, Claimant had a fixed place of employment. Employer points out that while Claimant had to report to Employer's office to board the van, he was not required to check in since he was aware of his daily assignment to Process Technologies prior to reporting to work. Employer also contends that no special circumstances or a special assignment existed relative to Claimant's job with Employer. Finally, Employer argues that Claimant was not paid for the time spent traveling to the worksite and he performed no work during the ride to the job site.

Section 301(c)(1) of the Act, 77 P.S. §411(1), states in pertinent part:

> (1) The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employee... arising in the course of his employment and related thereto.... The term "injury arising in the course of his employment," as used in this article... shall include all... injuries sustained while the employee is *actually engaged in the furtherance of the business or affairs of the employer*, whether upon the employer's premises or elsewhere. (Emphasis added).

The issue of whether the claimant was in the course of his employment when injured is a question of law subject to this Court's plenary review. Sekulski v. Workers' Compensation Appeal Board (Indy Associates), 828 A.2d 14 (Pa. Cmwlth. 2003), petition for allowance of appeal denied, 577 Pa. 674, 842 A.2d 408 (2004). Our determination must be based on the WCJ's findings of fact. Jamison v. Workers' Compensation Appeal Board (Gallagher Home Health Services), 955 A.2d 494 (Pa. Cmwlth. 2008), petition for allowance of appeal denied, 600 Pa. 757, 966 A.2d 572 (2009).

For a stationary employee, the general rule is that an injury sustained while he is going to or coming from work does not occur in the course of

employment. Mackey v. Workers' Compensation Appeal Board (Maxim Healthcare Services), 989 A.2d 404 (Pa. Cmwlth.), petition for allowance of appeal denied, __ Pa. __, 997 A.2d 1180 (2010). The courts have created exceptions to the "coming and going rule". Id. at 407. An injury sustained traveling to and from work will be compensable if one of the following exceptions is met: (1) the claimant's employment contract includes transportation to and from work; (2) the claimant has no fixed place of work; (3) the claimant is on a special mission for employer; or (4) special circumstances are such that the claimant was furthering the business of the employer. Clear Channel Broadcasting v. Workers' Compensation Appeal Board (Perry), 938 A.2d 1150 (Pa. Cmwlth. 2007); Sloane Nissan v. Workers' Compensation Appeal Board (Zeyl), 820 A.2d 925 (Pa. Cmwlth. 2003); William F. Rittner Co. v. Workmen's Compensation Appeal Board (Rittner), 464 A.2d 675 (Pa. Cmwlth. 1983).

In the instant case, the WCJ found that Claimant had no fixed place of employment. This finding is based on substantial evidence. Claimant credibly testified that Employer is a temporary agency that he went to looking for work and that he began his employment in November 2007. R.R. at 86a. Claimant testified further that he had only worked at Process Technologies during his one month employment with Employer. Id. at 97a. While Claimant may have not been employed at more than one location during his brief temporary employment with Employer, four of the other Claimants in these related matters testified that they worked in more than one location during the course of their employment with Employer. See March 24, 2008, Deposition Testimony of Raheem Johnson; March 24, 2008, Deposition Testimony of Allen Leonard; March 24, 2008,

Deposition Testimony of Stephen Hollman; March 24, 2008, Deposition Testimony of Andre Bailey.

Moreover, Mr. Weisenberger testified that the nature of Employer's business is to place workers with clients that need labor. See April 24, 2008, Deposition Testimony of Jeff Weisenberger at 13. Mr. Weisenberger testified further that a job is indefinite in length as far as duration but when a job ends, the employees are offered other places to work if there is an opening. Id. In short, the record shows that Employer is in the business of supplying temporary employees to businesses that need labor on an agreed upon basis. See Peterson v. Workmen's Compensation Appeal Board (PRN Nursing Agency), 528 Pa. 279, 287-88, 597 A.2d 1116, 1120 (1991) ("Regardless of this Appellee's attempt to disguise the true nature of its employees' status, by assigning them to work assignments one week in advance, the facts of the matter remain the same: A temporary employee, who is employed by an agency, never has a fixed place of work. Consequently, when the agency employee travels to an assigned workplace, the employee is furthering the business of the agency.").

Accordingly, the Board did not err in affirming the WCJ's determination that Claimant's claim fell within an exception to the "coming and going rule". As found by the WCJ, Claimant had no fixed place of employment.

The Board's order is affirmed.

JAMES R. KELLEY, Senior Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

One Source Staffing, Petitioner	:	
v.	:	No. 19 C.D. 2011
Workers' Compensation Appeal Board (Smedley), Respondent	:	

O R D E R

AND NOW, this 8th day of July, 2011, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

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JAMES R. KELLEY, Senior Judge