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UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE

# ARIZONA COURT OF APPEALS

DIVISION ONE

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M3 TRANSPORT, LLC, *Petitioner Employer*,
GREAT AMERICAN INSURANCE COMPANY/RTW, *Petitioner Carrier*,

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,
WYLIE HARRISON, JR., *Respondent Employee.*

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M3 TRANSPORT, LLC, *Petitioner Employer*,
GREAT AMERICAN INSURANCE COMPANY/RTW, *Petitioner Carrier*,

*v.*

THE INDUSTRIAL COMMISSION OF ARIZONA, *Respondent*,
KENNETH INGRAM, *Respondent Employee.*

No. 1 CA-IC 13-0007 / 1 CA-IC 13-0008 (consolidated)
FILED 12-26-2013

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Special Action - Industrial Commission
ICA Claim Nos. 20112-660088 / 20112-690220
Carrier Claim Nos. 365443 / 365436
The Honorable Allen B. Shayo, Administrative Law Judge

**AWARDS AFFIRMED**

COUNSEL

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By Charles F. Richards
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The Industrial Commission of Arizona, Phoenix
By Andrew F. Wade
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## MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the Court, in which Judge Patricia K. Norris and Judge Donn Kessler joined.

**S W A N N**, Judge:

**¶1** This is a consolidated special action review of Industrial Commission of Arizona ("ICA") decisions and awards for compensable claims. Appellants raise six issues on appeal:

> (1) Whether the Administrative Law Judge ("ALJ") abused his discretion by finding that petitioner employer, M3 Transport, LLC, was paying for respondent employee Kenneth Ingram's motel room at the time of the accident;
>
> (2) Whether the ALJ abused his discretion by finding that the claimants were on duty because they were receiving either breakdown pay or hotel room reimbursement or both;

> (3) Whether the ALJ abused his discretion by finding that the employer benefitted from the claimants' trip to the M3 Transport terminal to check on the status of repairs to their truck;
>
> (4) Whether the ALJ's determination that the employer benefitted from the claimants making themselves "available for dispatch" is contrary to Arizona law;
>
> (5) Whether the ALJ failed to accurately apply the "totality of the circumstances" test; and
>
> (6) Whether the ALJ erred as a matter of law by finding that the claimants established legal causation for purposes of compensability.

We conclude that the evidence supports the ALJ's findings and establishes the requisite legal causation for compensability. For these reasons, we affirm the awards.

## JURISDICTION AND STANDARD OF REVIEW

**¶2** We have jurisdiction under A.R.S. §§ 12-120.21(A)(2) (2003), 23-951(A) (2012), and Arizona Rule of Procedure for Special Actions 10 (2009). In reviewing findings and awards of the ICA, we defer to the ALJ's factual findings, but review questions of law de novo. *Young v. Indus. Comm'n*, 204 Ariz. 267, 270, ¶ 14, 63 P.3d 298, 301 (App. 2003). We consider the evidence in a light most favorable to upholding the ALJ's award. *Lovitch v. Indus. Comm'n*, 202 Ariz. 102, 105, ¶ 16, 41 P.3d 640, 643 (App. 2002).

## FACTS AND PROCEDURAL HISTORY

**¶3** M3 Transport employed claimant Ingram and respondent employee Wiley Harrison, Jr., as team truck drivers to haul Department of Defense cargo. Because of their cargo's sensitive nature, the claimants' truck was fitted with an onboard computer and sensors to track its movement and activities. En route to Utah, the onboard computer system malfunctioned and erroneously began reporting "critical events" to the DOD. The DOD reported the problem to M3 Transport and M3 Transport directed the claimants to bring their truck to the Glendale, Arizona, terminal for repairs.

**¶4** When they arrived in Glendale, the claimants left their trailer at the M3 Transport terminal and used their tractor to drive to the Best Western Inn in Goodyear, where M3 Transport directed them to stay. It was company policy to rent one hotel room with two beds for team drivers, and M3 Transport paid for the claimants' room. Although claimant Ingram ultimately rented a second room at his own expense, M3 Transport continued to pay for a hotel room for both claimants. Claimant Ingram also rented a car at his own expense and both claimants returned their tractor to M3 Transport for maintenance. During this period, claimants were paid $100 in so-called breakdown pay for each weekday their tractor was under repair.

**¶5** On Monday, June 6, 2011, claimants decided to leave their hotel to drive to the M3 Transport terminal. Before leaving, claimant Ingram spoke to M3 Transport supervisor John Harris by phone and asked, "what's the next step, what do we do now -- do we stay in the hotel, . . . what do you have planned for us . . . we're at the company's disposal at this point on Monday." Harris told him to come to the terminal to discuss these issues in person.

**¶6** Claimant Ingram also spoke to Mike Watson, who had recruited both claimants to M3 Transport and was the liaison between the company and its drivers. When Ingram told Watson that they were having difficulty reaching the repair shop by phone, Watson suggested that they come to the terminal to check on their truck and then have lunch. Both Watson and Robert Whitaker, M3 Transport's breakdown manager, later confirmed that drivers frequently came by the terminal to check on their truck's repairs in person because it could be difficult to reach the repair shop by telephone. Watson explained that it "made sense for them to check on it" because "[t]he quicker they get back on the . . . road, the better for them" and the company. Claimant Ingram later testified that claimants chose to drive to the M3 Transport terminal for these reasons.

**¶7** On their way to the M3 Transport terminal, claimants were involved in a serious motor vehicle accident when a vehicle traveling in the opposite direction experienced a tire-tread separation, entered claimants' lane and collided head on with their rental car. Claimant Harrison remained in a coma for a month following the accident and both claimants have continuing difficulty with their memory of the events surrounding the accident. Both claimants filed worker's reports of injury but were denied benefits. They protested and the ALJ held four ICA hearings during which both claimants and five other M3 Transport employees testified.

**¶8** One of the contested issues in the ICA hearings was whether the claimants were on or off duty at the time of their accident. The evidence established that M3 Transport had defined "Off Duty" as follows: "A driver may log off duty when he/she is relieved of responsibility for his/her job. (Example: days off, company authorized meal stops)." In turn, "On Duty (Not Driving)" had been defined as: "All other time when the driver is working or is in the vehicle and not in the sleeper or driving" including "[a]ll time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle." Both claimants testified that they were "On Duty (Not Driving)" while waiting for their truck to be repaired. On the other hand, Daniel Stark, M3 Transport's Safety Manager, testified that the claimants would only have been considered on duty if the breakdown had occurred while they were on the road with a load on the truck. But Stark later acknowledged that M3 Transport did not pay for hotels while a driver was off duty.

**¶9** The ALJ ultimately found that the claimants' "status did not become off-duty immediately as of the time the truck was brought in for repairs" and entered awards for both claimants. M3 Transport requested administrative review but the ALJ summarily affirmed the awards. M3 Transport timely appeals.

**DISCUSSION**

**¶10** M3 Transport contends that the claimants were in a rental car engaged in personal business at the time of the accident and that there was therefore insufficient legal causation to support a finding of compensability. Claimants respond that their claims are compensable because they were traveling to the M3 Transport terminal for business purposes. The ALJ found that both claims were compensable after "[w]eighing the totality of the circumstances in this matter, [considering] all the evidence . . . in its entirety and upon [resolving] the conflicts in the evidence."

**¶11** To be compensable, an injury must "arise out of" and "in the course of" employment. *See* A.R.S. § 23-1021. "Arising out of" is defined as the origin or cause of the injury. *Royall v. Indus. Comm'n*, 106 Ariz. 346, 349, 476 P.2d 156, 159 (1970). "In the course of" pertains to the time, place, and circumstances of the accident in relation to the employment. *Id.* In the words of Professor Larson,

> [a] compensable injury must arise not only within the time and space limits of the

> employment, but also in the course of an activity related to the employment. An activity is related to the employment if it carries out the employer's purposes or advances [its] interests directly or indirectly. Under the modern trend of decisions, even if the activity cannot be said in any sense to advance the employer's interests, it may still be in the course of employment if, in view of the nature of the employment environment, the characteristics of human nature, and the customs or practices of the particular employment, the activity is in fact an inherent part of the conditions of that employment.

*S.E. Rykoff & Co. v. Indus. Comm'n*, 172 Ariz. 22, 25, 833 P.2d 39, 42 (App. 1992) (quoting 1A Arthur Larson, *The Law of Workmen's Compensation* § 20.00, at 5-1 (1990)).

**¶12** An activity may thus fall within the course of employment if it (1) "inure[s] to the substantial benefit of the employer" or (2) was "engaged in with the permission or at the direction of the employer." *Truck Ins. Exch. v. Indus. Comm'n*, 22 Ariz. App. 158, 160, 624 P.2d 1331, 1333 (1974) (citations omitted). "In making this legal determination, we consider the 'totality of circumstances' and decide whether there are 'sufficient indicia of employment related activity,' or a 'sufficient nexus between the employment and injury.'" *Jayo v. Indus. Comm'n*, 181 Ariz. 267, 270, 889 P.2d 625, 628 (App. 1995) (citations omitted) (internal quotation marks omitted). The claimant bears the burden to prove all elements of a compensable claim. *E.g., Toto v. Indus. Comm'n*, 144 Ariz. 508, 512, 698 P.2d 753, 757 (App. 1985).

**¶13** Here, viewing the evidence in the light most favorable to sustaining the ALJ's award, we find that the claimants were in Glendale to obtain truck repairs at the direction of M3 Transport. They were staying at the Best Western at their employer's direction and expense. Claimant Ingram rented a vehicle to perform activities that would prepare both of them to return to work when their employer directed them to do so. On the date of the accident, the claimants were traveling from their hotel to M3 Transport at their employer's direction. Considering the totality of these circumstances, there is ample evidence to support the ALJ's conclusion that the claimants' injuries arose out of and in the course of their employment. Further, we agree with the ALJ's conclusion that the

claimants' duty status at the time their truck was turned in for repairs is not dispositive of whether the events on June 6, 2011, were employment-related. *See, e.g.*, *Anton v. Indus. Comm'n,* 141 Ariz. 566, 568-69, 688 P.2d 192, 194-95 (App. 1984) ("It is not the appellation which the parties give to the relationship, but rather the objective nature of the relationship, determined upon an analysis of the totality of the facts and circumstances of each case, which is determinative." (citation omitted)).

## CONCLUSION

**¶14** For the foregoing reasons, we affirm.

Ruth A. Willingham · Clerk of the Court
FILED: mjt