IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PIMA COUNTY, Petitioner Employer, PINNACLE RISK MANAGEMENT, Petitioner Insurer, v. THE INDUSTRIAL COMMISSION OF ARIZONA, Respondent, ROBERT HOOKER, Deceased, Respondent Employee.	2 CA-IC 2009-0008 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

SPECIAL ACTION – INDUSTRIAL COMMISSION

ICA Claim No. 20081710179

Insurer No. WCPWC2008585827

LuAnn Haley, Administrative Law Judge

AWARD AFFIRMED

M. Ted Moeller — Tucson
Attorney for Petitioners Employer and Insurer

The Industrial Commission of Arizona
By Andrew F. Wade — Phoenix
Attorney for Respondent

Brian Clymer — Tucson
Attorney for Respondent Employee

H O W A R D, Chief Judge.

¶1 In this statutory special action, petitioners Pima County and Pinnacle Risk Management ("Pinnacle") challenge the decision of the administrative law judge (ALJ) that the death of deceased employee Robert Hooker was compensable. Because the decision is supported by substantial evidence and complies with the law, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the Industrial Commission's findings. *Polanco v. Indus. Comm'n*, 214 Ariz. 489, ¶ 2, 154 P.3d 391, 392-93 (App. 2007). Hooker was employed by Pima County. As part of his employment contract, Pima County provided him a car that it owned and maintained; it also paid for fuel and maintenance for the car. Hooker used this car to travel between home and the office and to get to various work-related appointments during the day. Hooker had just left the office and was driving to meet his wife for dinner when his car was struck by another vehicle. He died of injuries sustained in the accident.

¶3 Hooker's widow filed a claim with the Industrial Commission. Following an evidentiary hearing, the ALJ found the claim compensable. Pima County and Pinnacle, its workers' compensation insurer, filed a request for review, and the ALJ affirmed the award. Pima County and Pinnacle then timely filed this special action.

Discussion

¶4 Pima County and Pinnacle argue the ALJ incorrectly interpreted the employer's conveyance exception to the going and coming rule. In reviewing findings and awards of the Industrial Commission, we defer to the ALJ's factual findings but independently review any legal conclusions. *Young v. Indus. Comm'n*, 204 Ariz. 267, ¶ 14, 63 P.3d 298, 301 (App. 2003). If the ALJ's factual findings are supported by "substantial evidence," we will not disturb the decision. *Caganich v. Indus. Comm'n*, 108 Ariz. 580, 581, 503 P.2d 801, 802 (1972).

¶5 We have a duty to "liberally construe" the law on workers' compensation to ensure that "industry bear[s] its share of the burden of human injury as a cost of doing business." *Putz v. Indus. Comm'n*, 203 Ariz. 146, ¶ 24, 51 P.3d 979, 983-84 (App. 2002). Generally, "when an employee is injured going to or coming from his work place, the accident and resulting injuries do not arise out of or occur in the course and scope of employment." *Smithey v. Hansberger*, 189 Ariz. 103, 107, 938 P.2d 498, 502 (App. 1996). However, there are several exceptions to this "going and coming rule," including the "employer's conveyance" exception. *Id.* The employer's conveyance exception

requires both that the vehicle be provided by the employer and that the travel time appear to benefit the employer. *Id.*; *J.D. Dutton, Inc. v. Indus. Comm'n*, 120 Ariz. 199, 201, 584 P.2d 1190, 1192 (App. 1978). "In furnishing a vehicle for traveling to and from work, the employer 'has, in a sense, sent the employee home on a small ambulatory portion of the premises.'" *Smithey*, 189 Ariz. at 107, 938 P.2d at 502, *quoting J.D. Dutton*, 120 Ariz. at 201, 584 P.2d at 192.

¶6 A totality-of-the-circumstances test is used to determine whether the employer's conveyance exception to the going and coming rule applies. *Torres v. Indus. Comm'n*, 137 Ariz. 318, 320-21, 670 P.2d 423, 425-26 (App. 1983); *Fisher Contracting Co. v. Indus. Comm'n*, 27 Ariz. App. 397, 400, 555 P.2d 366, 369 (1976). We give "substantial deference" to the ALJ's application of the totality-of-the-circumstances test. *Cf. Valley Med. Specialists v. Farber*, 194 Ariz. 363, ¶ 11, 982 P.2d 1277, 1280-81 (1999) (appellate court gives "substantial deference both to the trial court's findings of fact and its application of law to fact" in applying totality-of-the-circumstances test); *State v. Crowley*, 202 Ariz. 80, ¶ 7, 41 P.3d 618, 621 (App. 2002) (we grant deference to trial court's application of totality-of-the-circumstances test).

¶7 In applying this test, the ALJ found that Pima County benefitted from furnishing the vehicle to Hooker. The ALJ made specific findings of several benefits, including that Hooker had accepted his job with Pima County in part because it furnished him with the vehicle; he used the vehicle to attend work-related engagements, and he

conducted work from the vehicle via his telephone. Those findings are supported by substantial evidence, and we must accept them. *Caganich*, 108 Ariz. at 581, 503 P.2d at 802.

¶8 Pima County and Pinnacle assert, however, that this particular trip was not between Hooker's work and home but rather between work and a restaurant. They do not provide any authority suggesting this factual distinction renders the employer conveyance exception inapplicable. And the rationale for applying the exception in the first place remains.

¶9 Relying in part on *Smithey*, Pima County and Pinnacle also contend this particular trip did not benefit the employer. But the circumstances here are even more directly connected to Hooker's employment than those of the employee in *Smithey*. In that case, the court noted that the employer's van pool program helped in "compl[ying] with clean air standards, relieving traffic congestion at the entrance to the plant, and getting employees to work on time." *Smithey*, 189 Ariz. at 108, 938 P.2d at 503. The employer also noted that it benefitted from the program through recruitment and retention of employees. *Id.* at 104, 938 P.2d at 499. Here, the ALJ found provision of the car was an important factor in Hooker's decision to take the job with Pima County and, further, that he used it "to attend meetings, attend court appearances and to call his assistants from the road." The ALJ did not make an error of law in applying the exception here.

¶10 Pima County and Pinnacle also argue that the circumstances of this case do not meet the requirements of *J.D. Dutton* and *Strauss v. Industrial Commission*, 73 Ariz. 285, 240 P.2d 550 (1952). But the court in *J.D. Dutton* did not confine the employer conveyance exception to the particular facts present there; it simply listed the circumstances satisfying the exception's requirements in that case, such as the "long and arduous" journey to the jobsite. 120 Ariz. at 201, 584 P.2d at 1192. And in *Strauss*, our supreme court noted circumstances similar to those here: "the employer apparently recognized that, . . . the employee could not devote the hours and attention required unless transportation was furnished." 73 Ariz. at 289, 240 P.2d at 553. The ALJ's finding that the provision of the vehicle was an important factor in convincing Hooker to take the job with Pima County and that he used the vehicle to devote the required hours and attention to his job further brings this case in line with *Strauss*.

¶11 Pima County and Pinnacle further cite *Brooks v. Industrial Commission*, 136 Ariz. 146, 664 P.2d 690 (App. 1983), and *Torres* in support of their argument. But neither of those cases involved employees injured going to and from work in their employer's conveyance. *See Brooks*, 136 Ariz. at 151-52, 664 P.2d at 695-96 (employer furnished transportation allowance); *Torres*, 137 Ariz. at 320, 322, 670 P.2d at 425, 427 (employees, denied transport in employer's conveyance, argued exception applied to accident in private vehicle).

Conclusion

¶12 Because the ALJ's factual findings are supported by substantial evidence and we find no error of law, we affirm the award that the injury is compensable.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge