IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

LINDA R. RODRIGUEZ	)	
	)	CIVIL ACTION NUMBER
Plaintiff	)	
	)	07C-07-034-JOH
v.	)	
	)	
CHRISTIANA CARE HEALTH SERVICES, INC.	)	
	)	
	)	
Defendant	)	
	)	

Submitted: January 21, 2009
Decided: April 21, 2009

MEMORANDUM OPINION

Upon Motion of Christiana Care Health Services, Inc., for Summary Judgment - ***GRANTED***

Appearances:

L. Vincent Ramunno, Esquire, of Ramunno & Ramunno, P.A., Wilmington, Delaware, attorney for plaintiff

Stephen J. Milewski, Esquire, of White & Williams LLP, Wilmington, Delaware, attorney for the defendant

HERLIHY, Judge

Defendant Christiana Health Services, Inc., (CHS), moves for summary judgment asserting plaintiff Linda Rodriguez's exclusive remedy is through workers' compensation. It is undisputed that she had suffered work related injuries. CHS arranged for her to see a physician for a flare-up of those injuries, and the next day after she had treated, she slipped and fell on some motor oil in a parking owned by CHS.

The issue presented whether the injury received in the slip and fall after having been treated was suffered while in the scope of her employment. This Court holds that it was and that Rodriguez's exclusive remedy is workers' compensation. CHS' motion for summary judgment is GRANTED.

Factual Background

Both parties agree that Rodriguez was injured in a work related injury that occurred on March 14, 2005. Rodriguez testified during her deposition she had injured her right wrist while transferring a patient. She sustained another work related injury on August 5, 2005. Again, she was injured from transferring a patient. This time she noted swelling in her right arm and injury to her right elbow. On September 1, 2005 Rodriguez experienced a "flare up" in her right elbow. A representative of her employer arranged for her to see a physician the next day. On September 2, 2005 she visited that physician at Christiana Care Physical Therapy Plus. She was treated and dismissed. During her walk from the doctor's officer to her car, she slipped on a puddle of oil and suffered injuries to her right elbow and left knee. The slip and fall on the oil is the cause of the instant lawsuit.

The record shows that Rodriguez has received workers' compensation benefits for the injury she sustained on March 14, 2005. Rodriguez and CHS entered into three workers' compensation agreements relating to the March 14, 2005 accident. The disability dates stemming from the March 14, 2005 accident are: April 23, 2005 to April 24, 2005; September 7, 2005 to October 8, 2005; and October 9, 2005 to November 2, 2005.[1] All forms describe the "right arm" as the injured body part.[2]

Parties' Contentions

CHS argues it is entitled to summary judgment because Rodriguez, which it claims was their employee at the time of the fall, can only look to the workers' compensation statute for a remedy. It also contends that Rodriguez was also within the scope of her employment when she took time off from work to seek treatment.

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[1] Exhibits C and D to CHS' motion for summary judgment. These agreements are on Rodriguez's behalf and Christiana Health System, not Christiana Health Services. This difference in names led to some initial confusion and to an exchange of correspondence subsequent to oral argument on CHS' motion. Rodriguez argued that as Health System entered into the compensation agreements not Health Services, there were two different employers. As such, she contended, there is no issue of exclusivity.

CHS has supplied an affidavit from Audrey Luven, Vice President of CHS Human Services. She explains the compensation agreements were prepared by a third party provider (insurer) which mistakenly used Health System and not Health Services. Rodriguez and other employees of Christiana Hospital are Health Services employees. None are System employees. CHS owns, the parking where Rodriguez fell.

The Court finds this affidavit adequately explains the unfortunate paper confusion which crept into this case. It sees no reason, as Rodriguez requests, to indulge in needless discovery on the issue.

[2] Defendant's Exhibit D.

Rodriguez asserts she is not bound to seek only workers' compensation because the accident in the parking lot happened outside the scope of her employment.

Applicable Standard

A moving party is entitled to summary judgment when there are no genuine issues of material fact and it is entitled to judgment as a matter of law.[3] All factual inferences must be viewed in a light most favorable to the moving party.[4]

Discussion

The primary issue before this Court is whether Rodriguez's trip to the her physical treatment appointment was within the scope of her employment with CHS. Rodriguez was at work on September 1, 2005. She was suffering from a flare-up of her work related injury. With the assistance of a CHS employee, an appointment was made for her to see a physician the next day. That physician's record indicated he was seeing her on an "emergent" basis. His office was on CHS property. Rodriguez testified during her deposition that she was off of work on September 2nd. Therefore, her trip to the hospital facilities on that day were not to go to work. The fall in the parking lot did not happen while Rodriguez was at work.

The issue presented implicates what is known as the "coming and going" rule. This rule generally means that if an employee is injured going to or coming from work, he or

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[3] *Delmar New, Inc. v. Jacobs Oil Co.*, 584 A.2d 531, (Del. Super. 1990).

[4] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).

she is not entitled to workers' compensation.[5] The Supreme Court has advised that a liberal interpretation of the workers' compensation law should be undertaken by the Courts to uphold the spirit and purpose of the law to provide a streamlined process for dealing with work related injuries.[6] These law is also designed to relieve employers and employees of the burdens of civil litigation.[7] The statute encourages an injured employee to seek treatment for work related injuries.[8] Failure to seek treatment can lead to forfeiture of benefits.[9] Thus treatment become part of the employment "contract."[10]

CHS argues the September 2nd visit, however, falls within the scope of employment under an exception to the "coming and going" rule. The exception upon which it relies, however, is known as the compensation exception. In *Histead v. E.I. Du Pont de Nemours & Co.*, the Delaware Supreme Court adopted this exception. In *Histead,* the employee was injured while going to work. The trip was outside normal working hours, but the employee was responding to an emergency call to come to one of its plants. While driving to that plant, the employee was injured in an auto accident. The employee was also

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[5] *Histead v. E.I. Du Pont Nemours & Co.*, 621 A.2d 340, 343 (Del. 1993).

[6] *Childrens Bureau v. Nissen,* 29 A.2d 603, 609 (Del. 1942).

[7] *Champlain Cable Corp. v. Employers Mut. Liability Co.*, 479 A.2d 835 (Del. Super. 1984).

[8] 19 *Del. C.* § 2353(a).

[9] *Id.*

[10] *Larsons' Workers' Compensation* § 13.13.

compensated for three hours travel pay for this overtime trip. The Court noted "the existence of travel pay is strong evidence that an employee is acting within the course and scope of employment while on a trip to and from work."[11]

More to the point, is the case of *Flamer v. City of Wilmington*.[12] Flamer was injured at his job at the Port of Wilmington. He underwent treatment including physical therapy and work hardening. After leaving one of these sessions at the Delaware Curative Center (note not his own employer's property as here), he slipped on some ice aggravating his work injury. The Industrial Accident Board held using the bar of the coming and going rule to deny workers compensation benefits.

This Court reversed that determination. It saw such a determination as inconsistent with the goals of our workers' compensation statutes. It noted that an employer is obligated to provide compensation for travel to and from treatment.[13] This placed the employee's trip with the exception recognized in *Histead*.[14] The Court held that an employee is entitled to workers' compensation when injured going to or from treatment.

The Court agrees and finds the decision in *Flamer* to be dispositive of this case. The *Flamer* Court held that injuries that occurred in the parking lot were within the

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[11] 621 A.2d at 345.

[12] 1998 WL 109975 (Del. Super.).

[13] 19 *Del. C.* § 2353(a).

[14] See also *Collier v. State*, 1994 WL 381000 (Del. Super.).

Workers' Compensation Statute because the plaintiff's journey to the rehab center was pursuant to the contractual obligations to seek rehabilitation with the workers' compensation proceeds. The Court found the rehabilitation trip was within the scope of employment because the employer was statutorily obligated to pay for travel expenses and the medical treatment.

CHS argues that it has paid for Rodriguez's travel expenses to the therapy center through the statutory payments it was required to make under the workers' compensation statutes under 19 *Del.C.* § 2353(a). Accordingly, while Rodriguez may not have been going to or coming from work when she sought treatment or finished it, the Court finds that, taken as a whole, the rulings of *Histed*, *Collier*, and *Flamer*, establish that this trip was within the scope of her employment. These cases stand for the proposition that trips taken for the purpose of seeking medical treatment are work related when the employee is being adequately compensated for travel and medical expenses under the Workers' Compensation Statute. Rodriguez's exclusive remedy is through workers' compensation.

Conclusion

For the reasons stated herein, Christiana's motion for summary judgment is **GRANTED**.

IT IS SO ORDERED.

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J.