IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JUDITH GONDEK,	)	
	)	
Claimant-Appellant,	)	
	)	C.A. No: N13A-04-008 FSS
v.	)	
	)	APPEAL
EASY MONEY GROUP,	)	
	)	
Employer-Appellee.	)	

Submitted: September 5, 2013
Decided: December 27, 2013

***Upon Appeal from Industrial Accident Board* – AFFIRMED**

1. This appeal concerns the "going and coming" rule precluding workers' compensation for injuries sustained in a typical commute, and the "special errand" exception to the rule. The exception allows benefits if the injury happened while the worker was running a special errand for the employer during the commute.

2. On October 8, 2013, after clocking out, Claimant drove to TD Bank to make a deposit for Employer. While going south on Concord Pike on her way home from the bank, Claimant was in a collision. She hurt her neck, back, and head.

3. On December 21, 2012, Claimant filed a Petition to Determine Compensation Due. Employer responded that the collision occurred outside the

course and scope of employment as Claimant had completed her duties and was on her way home. Thus, the "going and coming" rule precluded benefits.

4. The Industrial Accident Board held an evidentiary hearing on March 28, 2013. In its April 3, 2013 decision, the Board agreed with Employer that the collision did not occur in the course and scope of Claimant's employment, and was not compensable under the Workers' Compensation Act.

5. Claimant timely appealed the Board's decision here. As she did before the Board, Claimant alleges the collision was within the course of her employment or, alternatively, the "special errand" exception applies.

6. This appeal presents a mixed question of fact and law. As to the facts, the court is limited to determining whether substantial evidence supports the Board's fact-finding.[1] Legal questions, and only legal questions, are reviewed *de novo*.[2]

7. The Delaware Workers' Compensation Act is liberally construed to compensate the injured employee.[3] A compensable injury is a "personal injury sustained by accident arising out of and in the course of employment."[4]

[1] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (1965).
[2] *Oceanport Indus., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994).
[3] *Histed v. E.I. Du Pont de Nemours & Co.*, 621 A.2d 340, 342 (Del. 1993).
[4] 19 *Del.C.* § 2301(18).

8. The "going and coming rule," however, "precludes an employee from receiving workers' compensation benefits for injuries sustained while traveling to and from his or her place of employment."[5] There are several exceptions to the rule that may make injuries sustained during a commute compensable.

9. As mentioned above, one exception is for the "special errand." In an unnecessarily wordy way, Larson explains:

> When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.[6]

Larson further explains, however, that "if [the journey] is relatively regular, whether every day, ... or at frequent intervals, ... the case begins with a strong presumption that the employee's going and coming trip is expected to be no different from that of any other employee with reasonably regular hours and place of work."[7] As a matter of law, a special errand does not end until the employee is home or makes a personal

[5] *Tickles v. PNC Bank*, 703 A.2d 633, 636 (Del. 1997).
[6] *Histed*, 621 A.2d at 343 citing 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 16.10 (1990).
[7] 1 A. LARSON, *supra* note 6, § 16.11, 4-208.24 to 4-208.26 (1996).

detour.[8] So, if making the bank deposit were a special errand as she contends, Claimant's entire trip home would have been on the job.

10. Five days after the Board's decision, *Spellman v. Christiana Care Health Services*[9] revisited the "going and coming rule" and its exceptions. *Spellman* cautioned against treating the exceptions as a statutorily derived checklist and, instead, encouraged analyzing the totality of the circumstances to determine whether "the employment contract between employer and employee contemplated that the employee's activity at the time of injury should be regarded as work-related and therefore compensable."[10] Essentially, *Spellman* created a two-step analysis to determine injury during travel's compensability: 1) was the travel an established element of the employment contract? If not, 2) were the circumstances of the travel unusual, urgent, or risky?

11. *Spellman* specifically left the established precedent unperturbed if, as here, there was no writen agreement and a contract-based interpretation was, therefore, inappropriate.[11] An earlier decision, which is still good, *Histed v. E.I. Du Pont de Nemours & Co.*,[12] directly reviewed and explained the "special errand" exception. "The elements of urgency or increased risk may supply the necessary

[8] *E.g. Jeewarat v. Warner Bros. Entm't, Inc.*, 98 Cal. Rptr. 3d 837, 846 (2009).
[9] 74 A.3d 619 (Del. 2013).
[10] *Id.* at 625.
[11] *Id.*
[12] 621 A.2d 340 (Del. 1993).

bases for converting a routine trip into a special errand."[13] Holding that the exception applied where employee responded to a plant shutdown at 2:00 a.m., *Histed* found there was nothing routine about the what the employee did, and urgency was clear. Cases finding urgency involve exigent circumstances such as the total plant shut down in *Histed* or a physician's responding to an after-hours call, as in *Johnson v. Fairbanks Clinic*,[14] etc. Conversely, cases denying compensation found no exigency.[15] Employees are regularly directed to undertake immediate tasks. Converting an ordinary task to a "special errand" requires unusually demanding circumstances.

12. Again, Claimant argues that the collision is compensable either as within the scope of her employment under *Spellman* or under the "special errand" exception to the "going and coming rule." Even if there were a written contract here, which there was not, *Spellman* could not have changed the Board's decision.

13. The Board held, as a matter of fact, that Claimant's trip was nothing special. The Board relied on Claimant's "Daily Planner," which referenced "Balance Drawer and Make Deposits" under both morning and afternoon "functions." Further, the parties agreed that bank deposits, while not a daily task, were part of

[13] *Id*. at 344.
[14] 647 P.2d 592 (Ala. 1982).
[15] *See, e.g.*, *Moosebrugger v. Prospect Presbyterian Church of Maplewood*, 96 A.2d 401, 403 (N.J. 1953).

Claimant's job. The Board rejected Claimant's assertion that the deposit was urgent because she had to make it directly after work without detour. Any time more than $1000 was in the cash drawer, an employee had to make an immediate deposit. Nothing about the situation here was unique, urgent, or risky. Claimant simply mistakes "urgent" for timely and without interruption. Accordingly, the Board's finding that Claimant's going to the bank directly after clocking out was part of her job and not a "special errand" is supported by substantial evidence.

14. Because the "special errand" exception does not apply to Claimant's doing the banking, the trip falls under the "going and coming" rule. Claimant's injuries happened on her own time after work, including the banking, was done. Accordingly, the injuries are not compensable as a matter of law.

For the above reasons, the Industrial Accident Board's decision is **AFFIRMED**.

IT IS SO ORDERED.

/s Fred S. Silverman
Judge

cc: Prothonotary (Civil Division)
Stephen T. Morrow, Esquire
Christine P. O'Connor, Esquire