IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

KAREN E. HETTINGER,	:	
	:	
Plaintiff,	:	C.A. No.: 05C-07-022 (RBY)
	:	
v.	:	
	:	
BOARD OF TRUSTEES OF THE DELAWARE TECHNICAL AND COMMUNITY COLLEGE and RICHARD R. DePAUL,	:	
	:	
Defendants.	:	

Submitted: September 15, 2006
Decided: September 27, 2006

L. Vincent Ramunno, Esq., Ramunno, Ramunno & Scerba, Wilmington, Delaware for Plaintiff.

Michael F. McTaggart, Esq., Deputy Attorney General, Wilmington, Delaware for Defendants.

OPINION

UPON CONSIDERATION OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
GRANTED

Young, Judge

This is the Court's decision on the Motion of Defendants for Summary Judgment, presented by the Parties on briefs and oral arguments.

For centuries, presumably, employees would work to exhaustion for the pecuniary benefit of an employer over the course of years, only to slip or to fail to notice something at the end of a hard day, bringing about an income-ending injury from a hand crushed under a marble slab or an ankle immobilized from disformation. Then, to the consternation of the employee and his family, the employer would, in the Dickensian mold, condemn him for his carelessness and terminate him. If suit were commenced by the employee, the defense of some (no matter how slight) degree of contributory negligence would defeat his claim, leaving a family destitute (and, not insignificantly, a burden upon society). Against that sort of backdrop was the concept of workers' compensation created. As a matter of public policy, for the general good of the populace, people injured on the job would have protection against personal injury and financial losses. The quid pro quo for that enormous leap, of course, was that the protection afforded would be the exclusive remedy. It was not a "beat me in tort if you can; but, if not, you always have a guaranteed fall back minimum base" system. It was a workplace exchange of systems.

Over the years, workers, some of whom were markedly lax and some of whom were merely tragically unfortunate, successfully sought definition of their protection regardless of their own actions to include situations far beyond a physical injury by direct contact with a material or a machine with which they were hired to engage. Thus, the recovery available for an injury sustained, without any regard whatsoever

to whose negligence brought it about, was for any personal injury "arising out of and in the course of employment," a much more expansive safety net.

While the availability of the workers' compensation protection system, as it has developed, is to many a lifestyle saving circumstance; to others, who believe themselves to have been injured through utterly no fault of their own, the allure of some perceived tort recovery is strong.

In that atmosphere, the principle developed must be adhered to, whether it provides expensive and enduring benefits for someone who was, himself, staggeringly negligent; or whether it precludes potential tort recovery to someone who was the paragon of caution. That, then, brings us to the instant case.

FACTS

Plaintiff, Karen E. Hettinger, is employed by the Delaware Technical and Community College ("DTCC") as an Educational Training Specialist. On August 6, 2003, at approximately 4:40 p.m., Plaintiff was returning from the Human Resources Office in the Terry Building to her office in the Workforce Development Center. Plaintiff, who ordinarily worked from 8:30 a.m. to 4:30 p.m., intended to gather her personal belongings in her office, and leave for the day. Plaintiff's course from the Terry Building was along a service road. As Plaintiff walked along the curb of the service road, which had no sidewalk, she was struck by a van, operated by Defendant DePaul.

As a result of the accident, Plaintiff suffered injuries to her right foot, which required surgery, and left foot, both of which are permanent injuries. Plaintiff, therefore, asserts tort claims for those physical injuries, as well as emotional damages, including depression and post traumatic stress effects.

Defendants, Board of Trustees of the Delaware Technical and Community College and Richard R. DePaul, move this Court for an order of summary judgment, arguing that Plaintiff's negligence claims are barred by 19 Del. C. §2304, the sole remedy available to Plaintiff for which is workers' compensation benefits. Plaintiff disputes that her recovery is limited to workers' compensation, maintaining that the accident did not occur during the course of her employment.

STANDARD OF REVIEW

Summary judgment should be rendered if the record shows that there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.[1] The facts must be viewed in the light most favorable to the non-moving party.[2] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.[3] However,

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[1] Super. Ct. Civ. R. 56(c).

[2] *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

[3] *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[4]

DISCUSSION

As indicated, workers' compensation is the exclusive remedy for any "personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies."[5] "The requirements 'arising out of' and 'in the course of' employment are two separate requirements, both of which must be met for workers' compensation to be available under the statute."[6]

The term "arising out of" refers to the origin and cause of the accident.[7] An essential causal connection between the injury and the employment is not required.[8] Therefore, an employee does not have to be injured performing a job-related activity

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[4] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[5] 19 Del.C. § 2304.

[6] *Stevens v. State*, 802 A.2d 939, 945 (Del. Super. 2002)(*citing Dravo Corp. v. Strosnider*, 45 A.2d 542, 543 (Del. Super. 1945)).

[7] *Id.* (*citing Storm v. Karl-Mil, Inc. By Home Ins. Co.*, 460 A.2d 519, 521 (Del. 1983)).

[8] *Tickles v. PNC Bank*, 703 A.2d 633, 637 (Del. 1997) (*citing Storm*, 460 A.2d at 521).

to be eligible for workers' compensation.[9] The injury only needs to arise from a situation, which has a "reasonable relation" to the employment.[10] "[A]n injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment, or has a reasonable relationship to it."[11]

The term "in the course of" refers to the time, place, and circumstances of the injury.[12] Generally, an employee who is injured while going from or coming to work is not eligible for workers' compensation benefits.[13] This rule is based on the premise that "when traveling to and from work, the employee simply confronts the same hazards and, therefore, experiences the same risks encountered by an individual on a personal excursion."[14] However, Delaware law recognizes an exception to this rule when the accident occurs on the employer's premises.[15]

In *Tickles*, an employee, who had not started her workday, was entitled to workers' compensation benefits for the injuries she sustained, when she slipped and

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[9] *Id.*

[10] *Rose v. Cadillac Fairview Shopping Center Properties (Delaware) Inc.*, 668 A.2d 782, 786 (Del. Super. 1995)(*citing Dravo Corp.*, 45 A.2d at 544).

[11] *Konstantopoulos v. Westvaco Corp.*, 690 A.2d 936, 939 (Del. 1996)(*citing Dravo,* 45 A.2d at 544).

[12] *Stevens*, 802 A.2d at 945 (*citing Storm,* 460 A.2d at 521).

[13] *Rose*, 668 A.2d at 787 (*citing Histed v. E.I. du Pont de Nemours & Co.*, 621 A.2d 340, 343 (Del. 1993)).

[14] *Tickles*, 703 A.2d at 636 (*citing Histed*, 621 A.2d at 343).

[15] *Id.* (*citing Quality Car Wash v. Cox*, 438 A.2d 1243, 1245 (Del. Super. 1981)).

fell in her employer's parking lot. At the time of the accident, Plaintiff was returning to her vehicle, after withdrawing lunch money from an ATM machine provided for the exclusive use of the employees. Despite the fact that the ATM machine was in a building separate from the employee's office, the Court held that the injury was compensable, because "once an employee reaches the employer's parking lot, i.e., the premises, he or she is entitled to compensation for injuries otherwise covered under the workers' compensation statute."[16] The Court highlighted the business relationship between the building that housed both the ATM machine and the human resources department.[17] In addition, there was evidence that the employees frequently walked through the parking lot to the ATM building.[18]

In the present matter, Plaintiff argues that she is not limited to filing a workers' compensation claim, because there was no causal relationship between the injury and her employment at the time of the accident. Plaintiff emphasizes the fact that the accident occurred ten minutes after the end of her normal workday.

Plaintiff's argument is unpersuasive. For an injury to be a compensable workers' compensation claim, there need not be an essential causal link between the

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[16] *Id.* (*citing Rose*, 668 A.2d at 787-88).

[17] *Id.*

[18] *Id.*

injury and the employment.[19] For an injury to arise out of the plaintiff's employment, it is sufficient for the injury to have a "reasonable relation" to the employment.[20]

In this case, the parties do not dispute that plaintiff was on DTCC property, walking from the human resources department in the Terry Building back to her office, so that she could retrieve her car keys and personal belongings, and leave for the day. A causal link between Plaintiff's employment as an Educational Training Specialist and the injury she sustained while walking across campus to her office is not required. As did the Court regarding the plaintiff in *Tickles*, we examine whether it is reasonable that employees will have business, either personal or professional, with an employer's human resources department. On that obvious basis, Plaintiff's walk between those buildings was reasonably related to her employment.

In addition, Plaintiff's argument that she was leaving for the day, albeit by an indirect route from the Terry Building to her office and then to her car, does not diminish the fact that her injury was compensable under workers' compensation. Delaware law recognizes an exception to the "going and coming" rule, if the accident occurs on the employer's premises. The parties do not dispute the fact that Plaintiff was injured on DTCC property. The "going and coming" exception, therefore, is applicable. Hence, the Court must find that Plaintiff was injured in circumstances arising out of her employment.

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[19] *Id.* at 637 (*citing Storm*, 460 A.2d at 521).

[20] *Rose*, 668 A.2d at 786) (*citing Dravo Corp.*, 45 A.2d at 544).

CONCLUSION

For the reasons stated above, Defendants' Motion for Summary Judgment is **GRANTED**. Plaintiff's injury, which arose out of and in the course of her employment at DTCC, is compensable exclusively as a workers' compensation claim, pursuant to 19 Del.C. § 2304.

SO ORDERED this 27th day of September, 2006.

/s/ Robert B. Young

J.

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