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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL CALE (Deceased), TINA CALE, On behalf of Olivia and Cecily Cale,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 93A02-0707-EX-572
LUNSFORD REALTY,	)	
Appellee-Defendant.	)	

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Application No. C-170980

December 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tina Cale ("Tina"), on behalf of her children, Olivia and Cecily Cale, appeals from the Worker's Compensation Board's ("the Board's") dismissal of her Application for Adjustment of Claim ("Claim"). Tina presents a single issue for our review, namely, whether the Board erred when it determined that the fatal injuries sustained by her deceased husband, Michael Cale ("Michael"), did not occur in the course of his employment with Lunsford Realty.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 18, 2006, a Single Hearing Member of the Board held a hearing on Tina's Claim. On October 27, that Hearing Member described the facts, in relevant part, as follows:

> 8. On May 1, 2003[,] Michael Cale and his wife, [Tina], were involved in a single vehicle accident resulting in fatal injuries to Michael Cale. . . .
>
> 9. As of May 1, 2003[,] Defendant [Lunsford Realty] employed Michael Cale at an average weekly wage in excess of the statutory minimum of Eight Hundred Eighty-two Dollars ($882.00).
>
> * * *
>
> 11. As of May 1, 2003[,] Michael Cale's job responsibilities included recruiting, firing, training, promoting and helping the independent agents that worked for Defendant in residential sales and assisting and promoting Defendant's business.
>
> 12. Before the May 1, 2003[,] motor vehicle accident occurred, Michael Cale and [Tina] attended a bowling event sponsored by the Board of Realtors that was a fundraiser for D.A.R.E.
>
> 13. Michael Cale did not take part in organizing, promoting or running the event.

> 14. Defendant did not pay any sponsorship money towards the fundraiser.
>
> 15. Michael Cale paid the attendance fee for himself and his wife via personal check.
>
> 16. Historically, Defendant had not reimbursed employees for attending fundraisers for D.A.R.E. nor had Defendant made any direct contributions to D.A.R.E.
>
> * * *
>
> 20. When the May 1, 2003[,] motor vehicle accident occurred, Michael Cale was driving to his mother's house to pick up his children.
>
> 21. Defendant was not made aware of Michael Cale's attendance at the bowling event until after [the] May 1, 2003[,] motor vehicle accident occurred.

Appellant's App. at 49-51. The Single Hearing Member then concluded that "Michael Cale was not in the course of his employment with Defendant at the moment of the accident." Id. at 51.

On November 17, 2006, Tina filed an application for review by the Full Board. On April 23, 2007, the Board held a hearing, and on June 6 the Board adopted the Single Hearing Member's ruling. This appeal ensued.

DISCUSSION AND DECISION

When reviewing the decisions of the Board, we are bound by the factual determinations of the Board and may not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion. Eads v. Perry Twp. Fire Dep't, 817 N.E.2d 263, 265 (Ind. Ct. App. 2004), trans. denied. All unfavorable evidence must be disregarded in favor of an examination of only that evidence and the reasonable

inferences therefrom which support the Board's findings. Id. Moreover, we neither reweigh the evidence nor judge the witness's credibility. Id. We review questions of law de novo. Prentoski v. Five Star Painting, Inc., 827 N.E.2d 98, 101 (Ind. Ct. App. 2005), aff'd in part, adopted in part, 837 N.E.2d 972 (Ind. 2005).

Tina contends that the Board erred when it found that Michael's injuries did not occur in the course of his employment with Lunsford Realty. Whether an injury arises out of and in the course of employment is a question of fact to be determined by the Board. Manous, LLC v. Manousogianakis, 824 N.E.2d 756, 763 (Ind. Ct. App. 2005). Both requirements must be met before compensation is awarded, and neither alone is sufficient.[1] Id. The person who seeks worker's compensation benefits bears the burden of proving both elements. Id.

Whether injuries occur in the course of employment depends on "the time, place and circumstances under which the accident took place." Hatke v. Fiddler, 868 N.E.2d 60, 63 (Ind. Ct. App. 2007) (quoting Thiellen v. Graves, 530 N.E.2d 765, 767 (Ind. Ct. App. 1988)). Generally, injuries must occur during work and on the employer's premises to have arisen "in the course" of employment. Id. (quoting Global Constr., Inc. v. March, 813 N.E.2d 1163, 1166 (Ind. 2004)). "Therefore, most injuries sustained on route to or from the workplace are not covered." Id. (quoting March, 813 N.E.2d at 1166). However, there are exceptions to this general rule for injuries that occur close to, but not on, the employer's premises when an employee is going to or coming from work. March, 813 N.E.2d at 1167.

[1] There is no dispute that Michael's injuries arose out of his employment.

Here, Michael's injuries occurred after he left a fundraiser for D.A.R.E. that was sponsored by the Board of Realtors. Tina presents neither evidence nor citation to authority to support her position that those injuries occurred "during work and on the employer's premises," or that an exception to the general rule applies. See id.; Hatke, 868 N.E.2d at 63. Rather, Tina argues that the risk to which Michael was subjected was a "neutral risk" or a "positional risk." Appellant's Brief at 9-10.[2] But those doctrines apply only to the "arising out of employment" requirement, not to the "in the course of employment" requirement. See, e.g., Manousogianakis, 824 N.E.2d at 764 (discussing Milledge v. The Oaks, 784 N.E.2d 926, 931-34 (Ind. 2003)). Because there is no dispute as to whether Michael's injuries arose out of his employment with Lunsford Realty, we need not consider those issues.

Tina also maintains that this court recently "reasoned that driving to and from [a] meeting increased the risk of the employee being involved in an automobile accident. Thus, the employee was in the course of employment." Appellant's Brief at 10. In support, Tina, without specific page reference, cites our opinion in Hatke. But, again, insofar as there is language in Hatke that supports Tina's contention, that language is only in the context of the "arising out of employment" requirement. See Hatke, 868 N.E.2d at 64 ("To 'arise out of' employment, the injury and employment must be casually connected. . . . The pivotal question is whether the person's employment increased the hazard that led to the injury." (citations omitted)).

[2] The Appellant's Brief is not paginated. Our page reference, therefore, begins with the first page inside the cover of the brief as "page one." We remind appellant's counsel of Indiana Appellate Rule 43(F), which states the pages of an appellate brief "shall be numbered at the bottom."

Further, Tina misunderstands the issue before this court in Hatke. As we clearly stated, "[t]he Hatkes apparently accept that Terresa [Hatke's] injuries arose out of and in the course of her employment, because she filed claims with [her employer's] worker's compensation insurer and was reimbursed." Id. We then went on to discuss the issue on appeal, namely, whether Indiana's Worker's Compensation Act divested the trial court of jurisdiction over the Hatke's common law negligence claims. Id. We did not hold, contrary to Tina's assertions, that the injuries suffered by Terresa Hatke occurred, as a matter of law, in the course of her employment. Id. at 63-65. As Tina cannot bear her burden to show that Michael's injuries occurred in the course of his employment, we cannot say that the Board erred in its determination.

Affirmed.

MATHIAS, J., and BRADFORD, J., concur.