SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0162-22

MARIO POZADAS,

Petitioner-Respondent,

v.

CAPITAL IRON ASSOCIATES, LLC,

Respondent-Respondent.

HARTFORD UNDERWRITERS INSURANCE COMPANY,

Appellant.

Argued August 1, 2023 – Decided October 30, 2023

Before Judges Firko and Mitterhoff.

On appeal from the Division of Workers' Compensation, Department of Labor and Workforce Development, Claim Petition No. 2017-6565.

Dorothy Thompson Daly and Michelle Deanna Gasior argued the cause for appellant Hartford Underwriters Insurance Company (Dickie McCamey & Chilcote, PC,

attorneys; Dorothy Thompson Daly, of counsel and on the briefs; Michelle Deanna Gasior, on the briefs).

Richard P. Krueger argued the cause for respondent Mario Pozadas (Richard P. Krueger LLC and The Blanco Law Firm, LLC, attorneys; Pablo N. Blanco, of counsel and on the brief; Richard P. Krueger, on the brief).

PER CURIAM

In this workers' compensation matter, Hartford Underwriters Insurance Company, (Hartford) the insurer for respondent Capital Iron Associates, LLC appeals from two orders: (1) a May 7, 2019, judgment denying its motion to dismiss the insurance carrier for lack of coverage; and (2) an August 11, 2022, judgment encompassing an April 29, 2022, written decision holding that petitioner, Mario Pozadas, was within the course and scope of his employment with respondent at the time of this accident. We affirm.

Petitioner is the owner and an employee of respondent, a structural steel company established in October 2015 that solicits and writes estimates for welding projects and then fabricates and installs the materials. Approximately sixty percent of respondent's work involves travel to and from projects, including travel to prepare estimates. Petitioner routinely decides what vehicles to use when traveling for business purposes, as well as the routes he will take to get to jobsites. In conjunction with this business venture, petitioner procured an

insurance policy from Hartford, which includes workers' compensation coverage for petitioner, with effective dates of October 13, 2015, through October 13, 2016.

Hartford alleges that it sent a renewal notice to petitioner on August 19, 2016; however, petitioner denied receiving the notice. Petitioner's insurance broker contacted him by email on September 16, 2016, to advise of the pending policy expiration, and he replied on September 29, 2016, advising that he would like to exclude coverage for himself as an individual for the upcoming policy period. Before the broker finalized changes to the policy, the Hartford policy expired on October 13, 2016. On October 14, 2016, petitioner emailed the broker and agreed to call her later that day.

Also on October 14, petitioner was working for respondent on a home renovation project in Hightstown. For that project, he was driving a flatbed truck which displayed the company name and was loaded with beams and columns and carried several hourly workers. At about 3:00 p.m., petitioner received a call from a client about a project at a nearby funeral home and he met this client at a deli in Hightstown to discuss the work. Petitioner then dropped off the hourly workers and the flatbed truck at his shop in Trenton. Because it was a nice day, he elected to use a friend's motorcycle to travel from the shop

back to Hightstown to view the project at the funeral home and prepare an estimate.

Instead of traveling directly to the funeral home, petitioner took a drive to Pennsylvania, four miles from his shop, to enjoy the nice weather. The parties acknowledge that a direct route from the shop to the funeral home was approximately fifteen miles, but petitioner elected a longer route, through Pennsylvania, which would have been approximately twenty-six miles. However, the judge found that shortly after entering Pennsylvania, petitioner exited the 13 South jughandle to proceed to the funeral home. Accordingly, the judge found that after taking the jughandle, petitioner was back on a work-related mission prior to the subject accident.

On March 8, 2017, petitioner filed a workers' compensation claim alleging orthopedic and neurological injuries to his left leg, left foot, left hand, bilateral shoulders, and brachial plexus, as well as anxiety and depression arising from the accident.

On May 15, 2017, Hartford filed an answer denying coverage and, on December 4, 2017, filed a motion to dismiss for lack of coverage, alleging that respondent's policy had expired and not been renewed prior to the date of the accident. Petitioner opposed the motion, arguing that Hartford's nonrenewal did

not comply with the statutory requirements of N.J.S.A. 34:15-81 because, among other reasons, Hartford did not provide the requisite notice that it would terminate the policy.

The judge of compensation ordered discovery on the issue of the whether Hartford provided proper notice of the policy renewal. Subpoenas were issued to two employees of respondent's insurance broker. The matter was adjourned because Hartford's counsel learned that one of the subpoenas was directed to the wrong person and the other employee had retired and could not be located. On March 5, 2019, a judge conferenced the case with the parties to formulate a pre-trial memorandum agreeing that the coverage dispute would proceed in a bifurcated trial on May 7, 2019. The pre-trial memorandum also specified the witnesses the parties intended to call at trial. The memorandum was signed by all parties and the judge. The judge indicated that the case would be given priority due the gravity of petitioner's injuries, including a below-knee amputation, and gave Hartford one cycle to submit any additional submissions.

On May 2, 2019, Hartford wrote to the court seeking to withdraw its motion to dismiss without prejudice and to file a new motion to determine petitioner's coverage status. Petitioner opposed the new motion on May 6, 2019.

The coverage matter proceeded to trial on the scheduled date of May 7, 2019. Hartford was unable to present the specified witnesses to testify about the alleged nonrenewal. The judge found that Hartford's failure to provide these witnesses denied petitioner a speedy and efficient resolution of his claim. The judge also rejected Hartford's attempt to withdraw the coverage motion and file a new motion, finding that these actions ran contrary to the pre-trial memorandum and notice requirements. The judge also denied Hartford's original motion to dismiss with prejudice, thus holding coverage to be in effect at the time of the accident.

The coverage issue being resolved, a second judge presided over the compensation hearing, at which respondent argued that petitioner was not in the course of his employment at the time of the accident. In a written decision on April 29, 2022, the judge found that petitioner was within the course and scope of his employment at the time of the accident, and that his injuries were compensable under the Hartford policy. The judge expressly analyzed the relevant statutory and case law. Notably, the judge found credible petitioner's testimony that he was en route to conduct an estimate at the funeral home at the time of the accident, and that he did not intend to stop anywhere or conduct any

errands between his departure from his shop and the funeral home. An order of judgment reflecting this decision was entered on August 11, 2022.

On appeal, Hartford makes two arguments:

> POINT I
>
> THE JUDGE'S ORDERS ON MAY 7, 2019 VIOLATED [HARTFORD] DUE PROCESS RIGHTS.
> (Not raised below)
>
> > a. THE JUDGE'S DISMISSAL WITH PREJUDICE OF THE CARRIERS' MOTION TO DISMISS FOR LACK OF COVERAGE VIOLATED THE [HARTFORD] DUE PROCESS RIGHTS.
> > (Not raised below)
> >
> > b. THE JUDGE'S DETERMINATION THAT THE MOTION TO DETERMINE THE INSURANCE COVERAGE OF THE PETITIONER "WAS NOT A MOTION" VIOLATED THE [HARTFORD] DUE PROCESS RIGHTS.
> > (Not raised below)
>
> POINT II
>
> THE PETITIONER WAS NOT IN THE COURSE AND SCOPE OF HIS EMPLOYMENT AT THE TIME OF THE ACCIDENT.

"Our review of decisions from the workers' compensation court [is] decidedly deferential," Ripp v. Cnty. of Hudson, 472 N.J. Super. 600, 606 (App. Div. 2022), based on the "compensation court's expertise and the valuable opportunity it has had in hearing live testimony." Hager v. M&K Constr., 246

N.J. 1, 18 (2021). Thus, "our review of workers' compensation decisions is 'limited to whether the findings made could have been reached on sufficient credible evidence present in the record.'" Ibid. (quoting Hersh v. Cnty. of Morris, 217 N.J. 236, 242 (2014)).

We decline to consider the due process issue raised in Point I of Hartford's brief because the issue was not raised in the workers' compensation court. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973) (declining to consider on appeal "issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'") (quoting Reynolds Offset Co. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959)).

We next reject Hartford's argument that petitioner was not in the course and scope of his employment at the time of the accident.

N.J.S.A. 34:15-36 defines the scope of employment:

> Employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer; provided, however, when the employee is required by the employer to be away from the employer's place of employment, the employee shall be

> deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer; but the employment of employee paid travel time by an employer for time spent traveling to and from a job site or of any employee who utilizes an employer authorized vehicle shall commence and terminate with the time spent traveling to and from a job site or the authorized operation of a vehicle on business authorized by the employer.

Notably, while the scope of employment may include travel to or from a job site, personal errands conducted along that route are outside the scope of employment. See Jumpp v. City of Ventnor, 177 N.J. 470, 483-84 (2003) (holding that an employee who deviated from his assigned rounds to perform a personal errand was not entitled to workers' compensation benefits). In this case, however, there was no evidence that petitioner performed any personal errand and at the time of the accident, it was his intention to go directly to the funeral home to prepare an estimate. The record thus supports the judge's factual finding, based on his assessment of petitioner's credibility, that petitioner was in the course of his employment at the time of the accident. Under our deferential standard of review, we see no reason to second-guess the judge's decision. Ripp, 472 N.J. Super. at 606.

Affirmed.