IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lawrence J. Kosko, deceased Harry and Lois Ressler, (Adm), Petitioners	:	
v.	:	
Workers' Compensation Appeal Board (ABARTA, Inc.), Respondent	:	No. 1089 C.D. 2008 No. 1174 C.D. 2008 Submitted: September 26, 2008

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY FILED: December 9, 2008

Harry and Lois Ressler (Claimants), Administrators of the Estate of Lawrence J. Kosko (Decedent), and Decedent's employer, ABARTA, Inc. (Employer), both petition for review of an order of the Workers' Compensation Appeal Board (Board) which reversed, in part, the decision of the Workers' Compensation Judge (WCJ) to grant the fatal claim petition.

Decedent was employed as a Director of Management Information Systems for Employer in Pittsburgh, Pennsylvania. On September 24, 2005, Decedent traveled to Anchorage, Alaska to attend a Bottlers' Organization for Technology Leadership Meeting (BOTL Meeting) on behalf of Employer. On

Sunday, September 25, 2005, in Girdwood, Alaska, Decedent and his wife were involved in a fatal motor vehicle accident.[1]

On March 31, 2006, Claimants filed a fatal claim petition under the Workers' Compensation Act (Act)[2] seeking benefits on behalf of Decedent's three dependent children. Claimants alleged that Decedent's death was the result of "multiple blunt force injuries" sustained when he was involved in a motor vehicle accident while traveling on business on behalf of Employer. Fatal Claim Petition at 1; R.R. at 2a. Employer filed an answer admitting that Decedent sustained an injury on September 25, 2005, but specifically denied that Decedent "was in the course and scope of his employment at the time of the fatal accident . . . ." Employer's Answer to Claim Petition at 1; R.R. at 4a. A hearing was held before the WCJ.

In support of the fatal claim petition, Harry Ressler testified before the WCJ. As the maternal grandfather, he is the co-guardian of Decedent's three children. N.T. at 8-9; R.R. at 14a-15a. Harry Ressler testified that Employer paid Decedent's salary and continued his benefits for approximately six months following Decedent's death. N.T. at 13-14; R.R. at 19a-20a. Employer also paid the funeral expenses for Decedent and his wife. Harry Ressler testified that he intended to reimburse Employer for the funeral expenses. N.T. at 14; R.R. at 20a.

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[1] The parties stipulated that the accident occurred at 9:40 a.m. on September 25, 2005, when the Decedent's vehicle was struck by an intoxicated driver forty miles south of Anchorage, Alaska. Notes of Testimony, May 23, 2006, (N.T.) at 18-20; Reproduced Record (R.R.) at 24a-26a.

[2] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§1-1041.4, 2501-2708.

At a June 28, 2006, hearing Claimants submitted the BOTL Meeting agenda into evidence. On Monday, September 26, 2005, BOTL Meeting attendees were to meet in the hotel lobby at 9:50 a.m. for a glacier tour cruise. BOTL Meeting Agenda, Claimants' Exh. No. 4, at 1; R.R. at 107a. On Tuesday, September 27, 2005, Decedent was scheduled to present an Employer status report between 3:30 p.m. and 4:00 p.m. BOTL Meeting Agenda at 2; R.R. at 108a. The BOTL Meeting was scheduled to adjourn on Wednesday, September 28, 2005, at 5:00 p.m. and a dinner was scheduled for 7:00 p.m. BOTL Meeting Agenda at 3; R.R. at 109a.

Lois Ressler also testified on behalf of the Claimants. She testified that Decedent and his wife, the Claimants' daughter, traveled to Anchorage, Alaska on September 24, 2005, because of Decedent's work. Notes of Testimony, June 28, 2006, (N.T. 6/28/06) at 62; R.R. at 94a. She called her daughter's cell phone the morning of September 25, 2005, and spoke with her daughter shortly before the accident, but was not informed by her daughter of their plans:

> Q. Did she [Claimants' daughter] tell you that she was looking [at] the mountains and they were beautiful the snow was on the mountains?
>
> A. I asked her what the weather was like and she said the sky was blue and the mountains had snow on them.
>
> Q. But you don't know where they were driving to or what they were doing?
>
> A. No . . . I did not.

N.T. 6/28/06 at 63-65; R.R. at 95a-97a.

In opposition to the fatal claim petition, Employer presented the testimony of its Director of Finance and Decedent's supervisor, Thomas McManus (McManus). McManus testified that "part of his [Decedent's] work" for Employer required him to keep informed about new technological developments "so that he . . . [could] bring new technology" back to Employer. N.T. 6/28/06 at 8-9; R.R. at 40a-41a. Decedent attended "programs and things that he thought would be in his personal best interest as well as things that he thought were relevant" and "for the best interest of the company . . . ." N.T. 6/28/06 at 12; R.R. at 44a. McManus, however, testified that the functions or meetings that Decedent attended on an intermittent basis were "ancillary" to his job duties as the "overwhelming majority of his responsibilities were carried out at the Pittsburgh headquarters of Abarta":

> His responsibilities centered in managing the MIS group on a daily basis. He had five people that reported to him . . . . He was responsible for a variety of different technology projects of overseeing and making sure those were being handled. And so I would say the conferences, while they were certainly relevant from the standpoint that they were more add-ons, good general education, broadening industry knowledge, but this BOTL organization, for example, we had never attended one and this was the first one that he was going to attend . . . . We had gotten by for a number of years without attending the BOTL conference.

N.T. 6/28/06 at 32-33, 52; R.R. at 64a-65a, 84a.

McManus testified that Decedent traveled to meet other information systems personnel in New York one year earlier and learned about the BOTL meeting. N.T. 6/28/06 at 44; R.R. at 76a. Decedent suggested to McManus that the annual BOTL meeting "might be something worth while attending." N.T.

6/28/06 at 44; R.R. at 76a. The BOTL Meeting entailed meeting with other information systems managers from other bottling companies to hold a "round table discussion and exchange [best practices] ideas." N.T. 6/28/06 at 11; R.R. at 43a. McManus testified that Decedent was not required to attend the BOTL meeting, but he was "encouraged" to attend because "it would be a positive thing to network and understand what's going on outside [of Employer's company]." N.T. 6/28/06 at 33; R.R. at 65a. McManus acknowledged that Decedent would not have been able to derive the benefit of networking with other professionals if Decedent had remained in Pittsburgh. Notes of Testimony, November 6, 2006, (N.T. 11/6/06) at 36; R.R. at 150a.

McManus approved Decedent's attendance at the BOTL Meeting. N.T. 6/28/06 at 12; R.R. at 44a. McManus knew that Decedent was a scheduled presenter. N.T. 6/28/06 at 18-19; R.R. at 50a-51a. Employer benefited by Decedent meeting with other information systems personnel, which was an "important reason" for Decedent to attend the BOTL Meeting. N.T. 6/28/06 at 20; R.R. at 52a.

Employer agreed to pay the airfare of Decedent and his wife and Decedent was reimbursed prior to leaving for Alaska. N.T. 6/28/06 at 13, 16; R.R. at 45a, 48a. McManus was aware that the trip took "a pretty full day," with flight and layover times that amounted to approximately ten hours. N.T. 6/28/06 at 24; R.R. at 56a. It was customary for employees attending conferences to depart the day before the conference was scheduled to begin and return the day the conference concluded or the day after depending upon dismissal times. N.T.

6/28/06 at 37; R.R. at 69a. McManus expected Decedent to be present in Alaska on September 25, 2005, because the BOTL Meeting began on September 26, 2005, with a sight-seeing cruise. McManus was aware that presenters at the BOTL Meeting were invited to go on the cruise to interact with and meet other speakers. N.T. 6/28/06 at 20-21; R.R. at 52a-53a. McManus did not object to Decedent's participation in the cruise. N.T. 6/28/06 at 21; R.R. at 53a.

McManus was aware that Decedent planned to spend additional time in Alaska with his wife before and after the BOTL Meeting. N.T. 6/28/06 at 13, 24; R.R. at 45a, 56a. McManus testified that he "normally would have expected him [Decedent] to leave or to travel on the 25th", but he did not object to Decedent arriving in Alaska on September 24, 2005. N.T. 6/28/06 at 23, 54; R.R. at 55a, 86a. McManus testified that "any extra days . . . [were] always at the employee's personal expense." N.T. 6/28/06 at 52; R.R. at 84a. McManus and Decedent agreed that Employer was only going to pay for incidental expenses associated with the BOTL Meeting from September 25, 2005, through the duration of the BOTL Meeting. N.T. 6/28/06 at 27; R.R. at 59a. Decedent was responsible for all other expenses, including hotel, rental car, meals and incidentals, attributable to spending "extra time" in Alaska. N.T. 6/28/06 at 13, 48; R.R. at 45a, 80a. In this regard, McManus testified:

> The extra days would have been the Saturday [September 24, 2005], where normally Sunday [September 25, 2005] would have been a travel day to the meeting for a meeting that began a Monday. The meetings finished on Wednesday. And the normal return day would be Thursday. The fact that they [Decedent and his wife] chose to come back on Friday [September 30, 2005] . . . that extra day would also not be covered, business-wise,

> at the tail end of the meeting. So you had the day before at the beginning and the day at the end that were not going to be covered.

N.T. 11/6/06 at 25; R.R. at 139a.

Employer also presented the testimony of its human resources coordinator, Paula Banachoski (Banachoski). She testified that Decedent's trip was both for business and personal reasons. N.T. 11/6/06 at 47; R.R. at 161a. Banachoski admitted that Sunday, September 25, 2005, was considered a travel day and Decedent would be reimbursed for his travel expenses that day. N.T. 11/6/06 at 47-48; R.R. at 161a-162a.

The WCJ granted Claimants' fatal claim petition. The WCJ also ordered Employer to pay Claimant's counsel fees in the amount of $16,865.00 because Employer did not engage in a reasonable contest. The WCJ made the following relevant findings of fact:

> 16. Employer presented additional testimony from Mr. McManus . . . .
>
> a. At that time, Mr. McManus initially testified regarding employer's policy for expense reimbursement, indicating that while employees are reimbursed for company or business-related expenses, travel expenses that are personal in nature are not covered. The significance of this testimony is that Mr. McManus admitted that the only days employer as [sic] not intending to cover decedent's expenses for his trip to Alaska were the Saturday on which arrived [September 24, 2005] and the Friday following the seminar, as that Friday was an (extra day) being taken by decedent and his wife. It is thus clear from Mr. McManus' testimony that decedent's expenses from Sunday [September 25,

2005] (the date of his death) through the end of the seminar were being covered as a business-related activity on the date of his death. Mr. McManus specifically admitted the decedent's car rental expenses would be reimbursed for the days employer was recognizing as business-related (Sunday through Thursday) . . . . Mr. McManus' testimony clearly establishes that decedent's death occurred at a time when employer was clearly recognizing the business relationship of this trip to his employment. This evidence thus clearly establishes decedent was in the course of his employment at that time. (emphasis added).

b. Mr. McManus also offered testimony establishing that decedent was a traveling employee at the time of his death, thus further submitting his status as being in the course of his employment at that time. Mr. McManus again admitted that decedent was presenting a discussion topic on the seminar agenda, and acknowledged that decedent would not be able to present to the group he was meeting with if he stayed in Pittsburgh. Specifically, Mr. McManus admitted decedent had to travel to make this presentation. Mr. McManus also admitted that decedent was sent to other sites to do business travel, and acknowledged that decedent was encouraged to attend such events for further development and education . . . . Additionally, Mr. McManus admitted that if decedent determined something would be of benefit and interest to the company, he would allow decedent to go due to the fact that decedent would not be able to derive the benefit by staying in Pittsburgh. Again, Mr. McManus' testimony . . . proves decedent could not carry out this important aspect of his job duties from his office in Pittsburgh, thus establishing decedent's status as traveling employee for purposes of conducting this aspect of his business with employer. (emphasis added).

. . . .

20. I find that the time his death occurred, decedent was a 'traveling employee' for purposes of the business trip in which he was engaged at the time the fatal injury occurred . . . . (emphasis added).

21. It is clear that the decedent's job duties involved travel, insofar as the decedent's job duties included keeping abreast with advances in technology and bringing that technology to ABARTA for its use and benefit . . . .

. . . .

23. I also find decedent is entitled to the presumption that he was furthering employer's business at the time of his death, having set out on the employer's business in attending the seminar on employer's behalf in Alaska. Lenzner Coach Lines v. WCAB (Nymick, Sr.), 632 A.2d 947 (Pa. Cmwlth. 1993) . . . .

. . . .

25. Employer has not offered any evidence into the record showing that decedent stepped outside the course of his employment at the time of the accident causing his death. Lacking such evidence, the record does not support a finding that employer has rebutted the presumption that decedent was acting within the scope of his employment as a traveling employee at the time of his death . . . .

26. I find that even if decedent could somehow not be considered a traveling employee, decedent's death is compensable nonetheless due . . . [to the fact] he was engaged in activity furthering the employer's business or affairs by traveling to Alaska to participate in the seminar . . . from which the employer admittedly derived a benefit. Section 301(c)(1) of the Act, 77 P.S. Section 411(1) specifically indicates that the term 'injury arising in the course of employment', as used in Article 3 of the Act, 'shall include all . . . injuries sustained while the employee is actually engaged in the furtherance of the business or affairs of the employer, whether upon the employer's premises or elsewhere['']. . . . The employee's representative, Mr. McManus, freely admitted that decedent was expected to be in Alaska for the seminar on September 25, 2005, the date on which decedent died. Employer agreed to pay decedent's expenses associated with travel from September 25, 2005, to the ending date of the seminar . . . . Again, there

> is no evidence of record indicating that decedent ever stepped out from under the 'course of employment umbrella' . . . . (emphasis added).
> . . . .
>
> 29. I find employer had a reasonable basis to contest this petition. Decedent's status at the time of death is a legal issue that the parties have legitimately disputed. (emphasis added).

WCJ's Decision, April 25, 2007, Findings of Fact (F.F.) Nos. 12, 15, 16, 20-23, 25, 26, 29 at 3-10; R.R. at 259a-66a.

> Based upon the findings of fact, the WCJ concluded that:
>
> 1. Claimants have carried their burden of proving that decedent sustained a fatal work related injury in the course of his employment with the employer on September 25, 2005. Therefore, the instant fatal claim petition is granted . . . . Employer is entitled to an offset against the benefits awarded to claimants based on the salary continuation paid by employer following decedent's death.
> . . . .
> 3. In light of the clear facts and evidence showing decedent was in the course of his employment at the time of his fatal injury, I find employer's contest of this matter has not been reasonable. Therefore, claimants are entitled to reimbursement of attorney's fees in the amount of $16,865.00 . . . . (Emphasis added).

WCJ Decision, Conclusions of Law (C.L.), No. 1, 3 at 11; R.R. at 267a. Claimant appealed to the Board, which affirmed the WCJ's decision, in part, and reversed, to the extent the Employer's contest was determined to be unreasonable and unreasonable attorney's fees were awarded.[3] These appeals followed.

[3] The Board found that the WCJ's Decision was internally inconsistent because in the Findings of Fact 29 the WCJ found that Employer had a reasonable basis for its contest of Claimant's fatal claim petition; however, in the WCJ's Conclusion of Law 3, the WCJ concluded that Employer failed to present a reasonable contest. Board Decision, June 3, 2008, at 10; R.R. **(Footnote continued on next page…)**

On appeal,[4] Employer raises four issues: (1) whether WCJ erred in finding that Decedent died while in the course and scope of his employment; (2) whether the WCJ erred in finding that Decedent was a traveling employee and thereafter, erred in assigning Employer the duty of rebutting the presumption that decedent was a traveling employee; (3) whether the WCJ's decision and order failed to meet the requirements of a "reasoned decision" within Section 422(a) of the Act; and (4) whether the WCJ correctly concluded that Employer established a reasonable contest of liability. Likewise, Claimants argue that (1) the WCJ properly awarded benefits because the credible evidence of record established that Decedent was a traveling employee and that he was within the course and scope of his employment on September 25, 2005; (2) Employer failed to establish a reasonable basis to contest the fatal claim petition; and (3) the WCJ issued a reasoned decision. This Court will address the issues *seriatim*.

I. Whether Decedent was in the course and scope of his employment at the time of the fatal motor vehicle accident?

In a fatal claim petition, the claimant bears the burden of proving all of the elements necessary to support an award. Whelan v. Workers' Compensation Appeal Board (F.H. Sparks Co.), 532 A.2d 65 (Pa. Cmwlth. 1987). It is the claimant's burden to prove by substantial competent evidence that the decedent's

(continued…)

at 279a. The Board determined Employer's contest was reasonable because Employer "clearly disputed whether Decedent's injury occurred within the course and scope of his employment." Board Decision at 11; R.R. at 280a.

[4] This Court's review is limited to a determination of whether an error of law was committed, whether necessary findings of fact are supported by substantial evidence, or whether constitutional rights were violated. Vinglinsky v. Workmen's Compensation Appeal Board (Penn Installation), 589 A.2d 291 (Pa. Cmwlth. 1991).

work incident occurred in the course and scope of employment. Motion Control Industries v. Workers' Compensation Appeal Board (Buck), 603 A.2d 675 (Pa. Cmwlth. 1992). In fatal claim petitions, the Act is to be liberally construed to provide surviving claimants with all benefits to which they may be entitled. Reed v. Workmens' Compensation Appeal Board, 499 Pa. 177, 452 A.2d 997 (1981).

Section 301(c)(1) of the Act, 77 P.S. §411(1), provides, in relevant part, that an injury arising in the course and scope of an employee's employment shall include injuries sustained while he is "actually engaged in the furtherance of the business or affairs of the employer . . . ." Injuries may be sustained in the course of employment where the employee, whether on or off the employer's premises, is injured while actually engaged in the furtherance of the employer's business or affairs. Acme Markets, Inc. v. Workers' Compensation Appeal Board (Purcell), 819 A.2d 143 (Pa. Cmwlth. 2003). Whether an employee is in the course of employment at the time of injury is a question of law. Bradshaw v. Workers' Compensation Appeal Board (Bell Hearing Aid Center), 641 A.2d 664 (Pa. Cmwlth. 1994).

The analysis of an employee in the course of his employment differs whether he is a stationary or traveling employee. In Denny's Restaurant v. Workers' Compensation Appeal Board (Stanton), 597 A.2d 1241 (Pa. Cmwlth. 1991), this Court explained:

> An employee will be considered to have suffered an injury in the 'course of employment' if the employee is injured while actually engaged in the furtherance of employer's business or affairs . . . . Our courts have analyzed 'course of employment' cases in two ways

> depending upon whether the employee is categorized as a 'traveling employee' or a 'stationary employee.' Collins v. Workmen's Compensation Appeal Board (American Society for Testing and Materials) 99 Pa.Commonwealth Ct. 228, 512 A.2d 1349 (1986), *petition for allowance of appeal denied*, 515 Pa. 610, 529 A.2d 1083 (1987). In cases concerning 'traveling employees' the 'course of employment' is broader with a presumption that the employee is engaged in the furtherance of employer's business . . . . In cases concerning 'stationary employees' the interpretation of 'course of employment' is narrower. Collins. There must be evidence that the trip away from employer's premises was business related. Id.

A. Decedent's Status as a Traveling Employee

Whether an individual is a traveling employee is a question of law, decided on a case-by-case basis. This Court has explained that the determination of whether an employee is a traveling employee is based on the following factors: whether the employee had a fixed work place, whether the employee's job duties required travel, how often the employee traveled and to how many different job sites. Toal Associates v. Workers' Compensation Appeal Board (Sternick), 814 A.2d 837, 841 (Pa. Cmwlth. 2003).

In Sternick, John Sternick (Sternick), worked as an engineer, designing, installing, and maintaining corrosion control systems for various construction projects. From September 1 through September 3, 1999, he was scheduled to work on a construction project in Queens, New York. On September 1, 1999, Sternick left his home near Reading, Pennsylvania and arrived at the worksite around 6:30 a.m. He worked until 6:00 p.m. after which he drove to a local motel and checked in at approximately 6:30 p.m. Sternick did not arrive at

the worksite the following day and he was found in his room by the motel staff. Sternick accidentally died as result of multiple health conditions.

Sternick's employer argued that the Board erred in concluding Sternick was a traveling employee and within the scope of his employment when he died. The employer argued that Sternick had a fixed place of work and he worked at the employer's central office for much of the year. This Court disagreed and concluded that the fact that an employee has a central office at which an employee sometimes works is not controlling. Id.

This Court noted that in Sternick the employer authorized Sternick to travel to the job site and remain overnight to complete the work. Additionally, Sternick frequently made such trips on behalf of employer, he was furnished with a company car, and employer paid all travel-related expenses. Consequently, this Court affirmed the WCJ's findings that Sternick was a traveling employee. Id.

Here, Decedent did have a fixed place of employment. McManus testified that the "overwhelming majority of his responsibilities were carried out at the Pittsburgh headquarters . . . ." N.T. 6/28/06 at 32-33, 52; R.R. at 64a-65a, 84a. However, that fact alone is not dispositive of the issue of whether Decedent was a traveling employee. Unlike Sternick, who spent "about one-third of his time each year traveling to and from worksites," Decedent did not frequently travel on behalf of Employer. In fact, one year had passed between Decedent's meeting in New York where he learned about the BOTL meeting and the September 2005, BOTL meeting held in Alaska. However, frequency of travel is just one factor to be

considered in assessing whether Decedent was a traveling employee and these issues are determined on a case-by-case basis by examining multiple factors.

At the time of Decedent's death, he left his place of employment in Pittsburgh and traveled to Alaska for Employer's benefit, much like Sternick had left his place of employment in Reading to travel to New York. Furthermore, like Sternick, Decedent was authorized to travel to the BOTL meeting in Alaska and his travel-related expenses incurred on September 25, 2005, were to be paid by Employer.

Another factor to be considered is whether Decedent's job duties required him to travel. Decedent may have attended functions and meetings only on an intermittent basis, but McManus testified that "part of his [Decedent's] work" for Employer required him to keep informed about new technological developments "so that he . . . [could] bring new technology" back to Employer. N.T. 6/28/06 at 8-9; R.R. at 40a-41a. McManus testified that as part of Decedent's employment it was anticipated that he would occasionally travel out of the area to attend programs for the mutual benefit of Decedent and Employer. Decedent may have infrequently traveled, but he had previously traveled for business to network with other industry professionals in New York. McManus admitted that he encouraged Decedent to attend the BOTL meeting and Decedent would not have been able to derive the benefit of networking with other professionals at the BOTL meeting if he had remained in Pittsburgh.

After applying the facts articulated in Sternick, this Court is of the opinion that the evidence of record overwhelming established that Decedent's travel was a necessary part of his employment such that he was a traveling employee. Our inquiry, however, does not end here.

B. Rebuttable Presumption

Because Decedent was a traveling employee he was entitled to a presumption that he was working for Employer at the time of his fatal motor vehicle accident.

The scope of employment of a traveling employee is broader than the scope of a stationary employee:

> When a traveling employee is injured after setting out on the business of his employer, it is presumed that he was furthering the employer's business at the time of the injury . . . . The employer bears the burden of rebutting this presumption . . . . To meet its burden, the employer must prove that the claimant's actions were so foreign to and removed from his usual employment that they constitute an abandonment of that employment . . . .

Roman v. Workmen's Compensation Appeal Board (Department of Environmental Resources), 616 A.2d. 128, 130 (Pa. Cmwlth. 1992). Furthermore, a traveling employee does not have to actually be furthering the employer's business affairs at the moment an injury arises: "[i]t is enough if he is occupying himself consistently with his contract of employment in a manner reasonably incidental thereto." Sternick, 814 A.2d at 842, quoting Lenzner Coach Lines v. Workers' Compensation Appeal Board (Nymick), 632 A.2d 947 (Pa. Cmwlth. 1993).

To rebut this presumption, Employer had to establish that Decedent's actions at the time of his fatal injury were so foreign to and removed from his usual employment that they constituted an abandonment of that employment. Carr v. Workers' Compensation Appeal Board (May Department Store), 671 A.2d 780 (Pa. Cmwlth. 1995). Employer argues that the credible evidence of record demonstrated that Decedent stepped outside the course and scope of his employment at the time of his death.

In Carr, Jill Carr (Carr) was sightseeing and pursuing personal interests while driving back to her hotel where she was staying for the duration of a job-related seminar. While sightseeing in the evening, Carr sustained injuries in a motor vehicle accident. This Court affirmed the denial of benefits on the basis that Carr was not required to travel over thirty-five miles and leave her hotel for an evening of sightseeing. The current controversy is distinguishable from the facts in Carr.

It is undisputed that on Sunday, September 25, 2005, Decedent and his wife were involved in a fatal accident at a location forty miles south of the BOTL meeting location. Employer argues that Decedent's sightseeing activities constituted actions foreign to and removed from his employment; however, unlike in Carr, there is no evidence of record to establish that Decedent was sightseeing on the morning of September 25, 2005.

Lois Ressler testified that she spoke with her daughter on the morning of September 25, 2005, prior to the accident, but she was not apprised of whether

Decedent and her daughter were sightseeing. Although it may be possible that Decedent was sightseeing on Sunday, September, 25, 2005, since Decedent was not required to participate in the BOTL meeting that day, there simply is no credible evidence of record to support this contention beyond mere speculation as to why Decedent was traveling forty miles south of the location of the BOTL meeting. Additionally, Employer admitted that Sunday, September 25, 2005, was a designated travel day and business-related travel expenses were to be paid by Employer. Likewise, Saturday, September 24, 2005, was the designated "extra day" and all expenses were to be paid personally by Decedent.

The evidence of record does not support a conclusion that Decedent's actions were a substantial deviation from Decedent's work-related endeavor such that they constituted an abandonment of employment. Accordingly, Employer failed to rebut the presumption that decedent was a traveling employee in the course and scope of employment at the time of his death.

III. Whether Employer reasonably contested the fatal claim petition?

The Board found that Employer had a reasonable basis to contest Claimants' fatal claim petition and reversed the WCJ's decision and order, to the extent that the WCJ determined Employer's contest was unreasonable and awarded unreasonable contest attorney's fees.

Section 440 of the Act, 77 P.S. §996, requires the assessment of attorney fees as a cost chargeable to the employer unless the employer meets its burden of establishing a reasonable basis for its contest. *See* Weiss v. Workers'

Compensation Appeal Board, 526 A.2d 839, 842 (Pa. Cmwlth. 1987), *allocator denied*, 536 A.2d 1335 (1987). When there is a legitimate dispute over a legal issue a reasonable contest has been established. *See* Frederic Granero Company v. Workers' Compensation Appeal Board, 409 A.2d 1187 (Pa. Cmwlth. 1980). An award of attorney's fees is improper under circumstances where an employer prompts litigation to resolve a genuinely disputed issue and not to merely harass an employee. *See* Elite Carpentry Contractors v. Workers' Compensation Appeal Board (Dempsey), 636 A.2d 250 (Pa. Cmwlth. 1993).

The Board found that Employer established a reasonable basis for its contest when it clearly disputed whether Decedent's injury occurred within the course and scope of his employment. Specifically, had the WCJ accepted portions of Employer's witnesses' testimony and Employer's arguments it was possible that the WCJ could have been persuaded that Decedent stepped outside the course and scope of his employment with Employer.

Claimants argue that the WCJ's findings that Decedent was within the course and scope of his employment and that he was a traveling employee at the time of his death on September 25, 2005, were supported by the competent evidence of record, specifically the testimony of McManus. Claimants assert they too relied on the testimony of McManus in setting forth their arguments. Consequently, Claimants contend that based upon the admissions made by Employer's own witness, the Board should have found that the evidence of record did not support a determination that Employer had a reasonable basis to contest the fatal claim petition. This Court is constrained to disagree.

Certainly, Employers are discouraged from unreasonably contesting workers' compensation claims. Ramich v. Workers' Compensation Appeals Board (Schatz Electric, Inc.), 564 Pa. 556, 770 A.2d 318 (2001). An employer may defend against an award of attorney's fees by creating a record that demonstrates a reasonable contest. Id. Employer demonstrated a reasonable contest in the proceedings below because there was a legitimate dispute over a legal issue and the contest was not merely to harass Claimants. Although McManus' testimony proved critical in setting forth arguments for both Claimants and Employer, the shared reliance on his testimony was not indicative of the absence of a genuine dispute over Decedent's status at the time of his death. To the contrary, McManus' factual testimony proved to be the source of a legitimate legal dispute as to Decedent's status on September 25, 2005. Consequently, this Court agrees with the Board that Employer's contest of Claimants' fatal claim petition was reasonable.

IV. Whether the WCJ failed to issue a reasoned decision?

Employer argues that the WCJ did not issue a reasoned decision in this matter as required by Section 422(a) of the Act, 77 P.S. §834:

> All parties to an adjudicatory proceeding are entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. The workers' compensation judge shall specify the evidence upon which the workers' compensation judge relies and state the reasons for accepting it in conformity with this section. When faced with conflicting evidence, the workers' compensation judge must adequately explain the reasons for rejecting or discrediting competent evidence.

> Uncontroverted evidence may not be rejected for no reason or for an irrational reason: the workers' compensation judge must identify that evidence and explain adequately the reasons for its rejection. The adjudication shall provide the basis for meaningful appellate review.

A WCJ's decision is "reasoned," for purposes of the Act, only if it allows for "adequate review by the WCAB without further elucidation and if it allows for adequate review by the appellate courts under applicable review standards. A reasoned decision is no more, and no less." Daniels v. Workers' Compensation Appeal Board (Tri State Transport), 574 Pa. 61, 76, 828 A.2d 1043, 1052 (2003).

Employer contends that the WCJ failed to issue a "reasoned decision" because the WCJ adopted Claimants' Proposed Findings of Facts and Conclusions of Law almost verbatim, which included counsel's typographical errors, mischaracterizations, mistakes, exclusions and the like. A WCJ, however, may accept findings as submitted by a party provided that the substantial evidence of record supports the findings. Sullivan v. Workmens' Compensation Appeal Board (Philadelphia Electric Company), 548 A.2d 404, 407 (Pa. Cmwlth. 1998). After reviewing the evidence of record, it is evident to this Court that the Findings of Fact rendered by the WCJ were clearly supported by substantial evidence, most particularly in the form of the testimony provided by McManus on which both parties relied. The WCJ committed no legal error by issuing a decision on the findings submitted by Claimants because the evidence of record supported the findings and they also permit adequate review by this Court.

Employer further argues that the WCJ failed to issue a "reasoned decision" because the WCJ excluded the testimony of Banachoski. Employer contends that Banachoski's testimony directly addressed whether Decedent was in the course of employment as a traveling employee on September 25, 2005, and the testimony was pivotal in explaining the payment of expenses following Decedent's death. Section 422(a) of the Act does not require the WCJ to discuss all of the evidence presented. Montgomery Tank Lines v. Workers' Compensation Appeal Board (Humphries), 792 A.2d 6 (Pa. Cmwlth. 2002). The WCJ is only required to make findings necessary to resolve the issues raised by the evidence and relevant to the decision. Id.; Pryor v. Workers' Compensation Appeal Board (Collin Service Systems), 923 A.2d 1197, 1202 (Pa. Cmwlth. 2006). The WCJ is able to issue a "reasoned decision" without giving an analysis of each statement by each witness and explaining how a particular statement affected the ultimate outcome. Acme Markets, Inc. v. Workers' Compensation Appeal Board (Brown), 890 A.2d 21, 26 (Pa. Cmwlth. 2006).

Employer argues that on the issue of reimbursed expenses, "Banachoski testified that even though September 25, 2005, was a travel day for Decedent, expenses that he incurred on that day were not to be reimbursed." Employer's Brief at 11. This Court does not agree. Banachoski did not offer any additional testimony that contradicted McManus's admissions that on September 25, 2005, the incidental expenses for Decedent were to be reimbursed by Employer:

> Judge Vallely [WCJ]: I don't think there is any dispute that he [Decedent] was going to be reimbursed for the

> expenses he incurred on the 25th. I think everybody has testified to that clearly.
> . . . .
>
> Q. [Claimants' Attorney]: And that was human resources' understanding as well?
>
> A. [Banachoski]: That's the company understanding, if I traveled the day before.

N.T. 11/6/06 at 50; R.R. at 164a. Accordingly, the WCJ was not required to making findings regarding Banachowski's testimony because it was not necessary to resolve issues raised by the evidence and relevant to the decision as the WCJ relied on McManus' uncontroverted testimony to the same effect. The WCJ summarized the relevant witness testimony that supported the findings.

Although the WCJ adopted the Claimants' Proposed Findings of Fact which excluded any reference to Banachoski's testimony, the WCJ's decision nevertheless meets the requirements of Section 422(a) of the Act to issue a "reasoned decision" since the WCJ's findings are supported by substantial evidence and are sufficient to allow for meaningful appellate review.

Accordingly, this Court affirms.

BERNARD L. McGINLEY, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Lawrence J. Kosko, deceased Harry and Lois Ressler, (Adm), Petitioners	:	
v.	:	
Workers' Compensation Appeal Board (ABARTA, Inc.), Respondent	:	No. 1089 C.D. 2008 No. 1174 C.D. 2008

O R D E R

AND NOW, this 9th day of December, 2008, the order of the Workers' Compensation Appeal Board in the above-captioned matter is affirmed.

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BERNARD L. McGINLEY, Judge