STATE OF MICHIGAN

COURT OF APPEALS

DAVID T. SCOTT,

Plaintiff-Appellant/
Cross Appellee,

v

ELECTRONIC DATA SYSTEMS CORPORATION and TRAVELERS INDEMNITY COMPANY,

Defendants-Appellees/
Cross Appellants.

UNPUBLISHED
October 28, 2004

No. 248458
WCAC
LC No. 02-000404

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Plaintiff David Scott appeals by leave granted and defendants cross-appeal a decision of the Worker's Compensation Appellate Commission (WCAC), reversing the magistrate and denying benefits to Scott. We reverse.

I. Basic Facts And Procedural History

This matter proceeded on the following stipulated facts:

> David Scott resided in Davison, Michigan at the time of the accident. He was (and is) an EDS employee who works at the Flint EDS office. As part of his job he was sent by EDS from the EDS Fling [sic] office to the GM Tech Center in Warren, Michigan to meet with GM employees on topics relating to work.
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> Mr. Scott completed his task and left the GM Tech Center in Warren at about 4:10 p.m. to return to the Flint area. He cannot say if he was going straight home or back to his office, as he has no memory of any of the events due to his serious closed head injury. Two co-employees spoke to David Scott on the day of the accident and he indicated he was not returning to the office from Warren but going home.
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> Most days he would work at his office but it was not unusual for him to be sent to a client's work location to resolve a computer system problem on the client's site. On occasion he would go directly home after the meeting and on

other occasions he would drive back to his office often depending on the time. Mileage was paid for the round trip to any client by EDS, as it was this day.

Mr. Scott's accident happened on is [sic] direct route back to the Flint-Davison area. A fellow EDS employee came upon the accident scene a few minutes later on his way back to the Flint Davison area.

The WCAC determined that plaintiff is not entitled to benefits because his injury did not arise out of and in the course of his employment. Plaintiff challenges that decision in this appeal.

II. Standard Of Review

Our review of the WCAC's decision is very limited. In reviewing a decision in a worker's compensation case, we begin with the WCAC's decision. If any evidence supports the WCAC's findings of fact and it did not misapprehend its administrative appellate role in reviewing the magistrate's decisions, then this Court must treat the WCAC's factual findings as conclusive.[1] This Court may review questions of law involved with any final order of the WCAC.[2] The WCAC's decision may be reversed if it operated within the wrong legal framework or based its decision on erroneous legal reasoning.[3]

III. Legal Standards

A worker's compensation claimant has the burden to establish by competent evidence that he or she suffered an injury and that his or her injury arose out of and in the course of employment.[4] There exists a presumption that an employee going to or from work, while on the premises where the work is performed and within a reasonable time before and after working hours, is in the course of employment.[5] In general, injuries that occur traveling to or from work, and off the work premises, are not compensable.[6]

IV. The Exceptions To The General Rule

There are six exceptions to this general rule:

(1) the employee is on a special mission for the employer, (2) the employer derives a special benefit from the employee's activity at the time of the

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[1] *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709-710; 614 NW2d 607 (2000).

[2] MCL 418.861a(14); *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1992).

[3] MCL 418.861a(14); *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401-402; 605 NW2d 300 (2000).

[4] *Simkins v General Motors Corp (After Remand)*, 453 Mich 703, 710; 556 NW2d 839 (1996).

[5] MCL 418.301(3).

[6] *Camburn v Northwest School Dist (After Remand)*, 459 Mich 471, 478; 592 NW2d 46 (1999).

> injury, (3) the employer paid for or furnished the employee transportation as part of the contract of employment, (4) the travel comprised a dual purpose combining the employment-required business needs with the personal activity of the employee, (5) the employment subjected the employee to "excessive exposure to the common risk," such as traffic risks faced by a truck driver on the way to his rig, and (6) the travel took place as the result of a split-shift working schedule or employment requiring a similar irregular nonfixed working schedule.[7]

The exceptions applicable in this case are the first and third. The first exception is discussed in *Le Vasseur v Allen Electric Co.*[8] That case involved an injury to a journeyman electrician. The plaintiff worked from the defendant's shop, but on occasion the defendant would send the plaintiff out to do special jobs for customers. When the plaintiff went outside the shop to work for the defendant, the defendant paid the plaintiff from the time he left the shop until the time he returned. The defendant also paid mileage to the plaintiff if the plaintiff used his own car. While the plaintiff was at home by the defendant's instructions during a materials shortage, the defendant contacted him and instructed him to report to a high school to do some work. While driving from his home to the high school, a tree limb fell from a tree onto the plaintiff's car, causing him serious injuries.[9]

The defendant challenged the worker's compensation commission's award of benefits. Noting that injuries suffered while going to and from work are not compensable, the defendant argued that the plaintiff's injuries did not arise out of and in the course of his employment because he had not yet arrived at the high school.[10] The Supreme Court noted that the case did not present the ordinary situation "of an employee going to and from his work but one where the employee was engaged in a special mission in the interest of and at the direction of his employer."[11] The Court held that "street injuries are compensable as arising out of the employment when it is the employment itself that places the employee on the street."[12] The Court therefore held that the plaintiff was entitled to benefits.

The Court discussed the third exception in *Chrysler v Blue Arrow Transport Lines*.[13] In that case, the plaintiff's decedent worked for the defendant as a truck driver. The decedent's job was to drive a loaded truck from Grand Rapids to Chicago, unload the truck, reload it with goods destined for Grand Rapids, and then drive the truck back to Grand Rapids. The decedent lived in Grand Rapids. If a driver arrived in Chicago too late on a Saturday for reloading of the truck, the

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[7] *Id*. at 478.

[8] *Le Vasseur v Allen Electric Co*, 338 Mich 121; 61 NW2d 93 (1953).

[9] *Id*. at 122-123.

[10] *Id*. at 123.

[11] *Id*.

[12] *Id*. at 125.

[13] *Chrysler v Blue Arrow Transport Lines*, 295 Mich 606; 295 NW 331 (1940).

driver could stay in Chicago or ride back to Grand Rapids on another of the defendant's trucks if one was returning to Grand Rapids.[14]

On one Saturday, the decedent arrived in Chicago too late to have his truck reloaded with cargo for a return trip to Grand Rapids. He elected to ride in another of the defendant's trucks back to Grand Rapids. The decedent spent Sunday with his family in Grand Rapids and then rode another of the defendant's trucks from Grand Rapids to Chicago. During the trip, the decedent died after he fell out of the truck's cab while it was moving.[15]

The Court addressed whether the decedent's death arose out of and in the course of his employment. As in *Le Vasseur*, the defendant argued that the plaintiff could not receive benefits under the general rule that travel to and from work is unrelated to employment.[16] However, the Court noted that it had previously held that "where the contract of employment contemplates conveyance of the employee to or from his place of work, accident [sic] arising out of such transportation is compensable."[17] The Court found that *Konopka* set forth a test to be applied when such a question arises: "whether under the contract of employment, construed in the light of all the attendant circumstances, there is either an express or implied undertaking by the employer to provide the transportation."[18]

V. Conclusion

These two cases control our decision. Like the plaintiff in *Le Vasseur*, Scott worked out of an office but EDS occasionally sent him out to client sites to do work. In addition, Scott received mileage for his travel to and from the clients' locations. Scott suffered his injuries not while traveling to or from his home to the Flint office, but while traveling from where he worked with a client in Warren. Scott received round-trip mileage payments for such travel; thus EDS was paying him to travel from the Warren client's site. Under both *Le Vasseur* and *Chrysler*, because EDS paid for Scott's travel and because Scott was traveling from an assignment to which EDS sent him as part of his employment, we conclude that the injuries he sustained while en route from the client site are compensable.

Reversed and remanded to the WCAC for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

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[14] *Id*. at 607-608.

[15] *Id*. at 608.

[16] *Id*.

[17] *Id*., citing *Konopka v Jackson Co Rd Comm'n*, 270 Mich 174; 258 NW 429 (1935).

[18] *Id*. at 608-609.