

3 Stonedeggs, Inc. et al. v. Workers' Compensation Appeals Board et al.
2024 DJDAR 3986

The Commercial Traveler Rule provides that employees whose work entails travel receive an extension to workers' compensation coverage to the travel itself and to other aspects of the trip reasonably necessary for the sustenance, comfort and safety of the employee.

FACTS/PROCEDURE

Braden Nanez was working as a food service worker at a camp to provide meals to firefighters during the fire season in a remote town outside of Happy Camp, California. Due to the camp's remote location, employees were required to stay on site for a term between three and six months. Additionally, there was an expectation that no employees would leave camp, "if possible," without arranging the leave with a supervisor.

On October 5, 2020, Nanez left "to town" after he was done with his morning shift. He did not tell his supervisor that he was going to leave. On his way back from town, Nanez collided head-on with an oncoming van, leaving him comatose. Supervisors speculated that Nanez probably drove to town to make some phone calls because Nanez did not have cellphone service at the camp. The Workers' Compensation Appeals' Board determined that the Commercial Traveler Rule applied to Nanez's claim, as he was traveling to make personal calls.

Nanez's employer petitioned for writ of relief, arguing that Nanez was injured due to leaving camp for a personal activity without employer approval, a material deviation from his employment.

HOLDING/DISCUSSION

Holding: Petition denied. Under the "commercial traveler" rule in workers' compensation law, an employee traveling on the employer's business is regarded as acting within the course of employment during the entire period of travel. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644, 652; 72 Cal.Rptr.2d 217, 951 P.2d 1184.) As a result, workers' compensation coverage applies to injuries the employee sustains during the travel itself and during the course of other personal activities "reasonably necessary for the sustenance, comfort, and safety of the employee," such as procuring food and shelter. (*Ibid.*)

The injured employee must prove by a preponderance of the evidence that his injury arose out of and was in the course of employment. (*LaTourette*, at p. 650; Lab. Code, § 3600.) "In the course of employment," ordinarily refers to the time, place, and circumstances under which the injury occurred. (*LaTourette*, at p. 651.) Thus "[a]n employee is in the 'course of his employment' when he does those reasonable things which his contract with his employment expressly or impliedly permits him to do." (*Ibid.*)

The second prong, "arising out of employment," concerns whether the injury occurred by reason of a condition or incident of the employment. (*Ibid.*) The causation element requires only "that the employment be one of the contributing causes without which the injury would not have occurred." (*Id.*, at fn. 1.) The two-pronged requirement is to be construed liberally in favor of awarding benefits.

(*LaTourette*, at 650-651.) However, personal activity not reasonably contemplated by the employer may constitute a material departure from the course of employment. (*Ibid.*)

Generally, an employee commuting to and from a fixed place of business at fixed hours is not considered to be acting within the scope of his employment. Under the so-called going and coming rule, injuries suffered during the ordinary local commute are not compensable. (*Hinojosa v. Workmen's Comp. Appeals Bd.* (1972) 8 Cal.3d 150, 157, 104; Cal.Rptr. 456, 501 P.2d 1176.) That is because employment plays no special role in the need for transportation other than the normal need of the employees' presence to perform their work. (*Ibid.*)

Here, the Court determined that Nanez was a commercial traveler as his travel was not an ordinary, daily local commute to a fixed place of business. His job required him to reside at the place of work away from his home. Nanez did not make Happy Camp his domicile. He was working two five hour shifts seven days a week at a remote camp, where there is no cellphone service, some 70 miles from the closest city of substantive size and 3 Stonedeggs did not expressly prohibit him from using his car. Thus, the Court found that Nanez's departure from camp was a generally foreseeable consequence of his employment away from home which was reasonably necessary for his comfort and sustenance.