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Sent: Thu Dec 02 12:35:49 2010  
Gallagher Sharp Shop Talk: Workers' Compensation

**Question: Can voluntary intoxication be a "special hazard," and used to avoid application of the "coming and going" rule?**

Occasionally, I use this space to discuss trial court cases with particularly interesting facts or which do a good job discussing a particular aspect of Ohio workers' compensation law. *Guzauskas v. Ryan*, 158 Ohio Misc. 2d 19, 2010-Ohio-3728, a recent case arising from the Clermont County Municipal Court which involved the application of the "coming and going" rule, is just such a case.

*Guzauskas* involved a restaurant manager/employee who was involved in a fatal automobile accident on her way home from work. Tests later revealed that she had a blood-alcohol content ("BAC") of .302 at the time of the accident, or more than four (4) times the legal limit. Several months later, the deceased employee's mother applied as a claimant for death benefits from the Ohio Bureau of Workers' Compensation. These benefits were opposed by the employer based on the "coming and going" rule. Both a DHO and SHO found that the employee was a "fixed site" employee, and therefore was precluded from participation in the Fund for accidents occurring while traveling to and from work. In addition, the hearing officers found that the employee's intoxication precluded her from being considered in the "course and scope" of employment pursuant to R.C. 4123.54(A)(2). The claimant perfected an appeal to the Clermont County Municipal Court pursuant to R.C. 4123.512, and a motion for summary judgment was filed by the employer.

In a detailed opinion granting the employer's motion, the trial court first discussed the history and legal basis for the "coming and going" rule. The trial court rejected the claimant's argument that she was "required" to drive her personal vehicle to work so as to make trips to the store or to catering events, and therefore was not a "fixed site" employee. There was no evidence that the employee was required to drive to work, that she rarely made such trips, and that she was not picking up supplies or going to a catering event at the time of the accident. Therefore, she was a "fixed site" employee, and absent an exception was not entitled to coverage for accidents occurring while traveling to and from work. As an exception, the claimant argued that the employee's excessive drinking was "encouraged or condoned" on the job, thereby creating a "special hazard" which would remove this case from the strict application of the "coming and going" rule. The trial court also dismissed this argument, finding that the employer's policies provided the opposite, that the employee was warned about excessive drinking in the past, and that there was no evidence that the employer had actual knowledge of the employee's excessive drinking on the night of the accident. While acknowledging that intoxication is condoned or encouraged by an employer can create a "special hazard" in certain circumstances, the trial court also pointed out that R.C. 4123.54(A)(2), which excludes intoxicated claimants from filing claims, removes all doubt as to whether the claim would be compensable.

*Guzauskas* contains an excellent summary of the "coming and going" rule, as well as the fairly novel argument that voluntary intoxication can serve as a defense to the rule.

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