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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Can a request to deliver keys be considered a "special mission" to avoid application of the "coming and going" rule?

As most of you know, Ohio and most other states exclude from workers' compensation coverage injuries incurred while "fixed situs" employees are traveling to and from work. This principle, often referred to as the "coming and going" rule, is one of the most litigated issues faced by employers. Recently, in *Wining v. Unique Ventures Grp, LLC*, 2011-Ohio-2474, the Seventh District Court of Appeals considered one of the lesser known exceptions to this hard and fast rule: the "special mission" exception.

Wining involved an associate manager (Wining) of a restaurant who was involved in a fatal automobile accident on his way to his place of employment to deliver keys to another manager (Howard). Howard had lost her keys, and near closing, called Wining to ask if he left his keys at work so that she could close and lock the restaurant. Wining informed Howard that he had his keys, but would return to work with his keys. While en route to the restaurant, Wining was killed in a motor vehicle accident. Wining's estate filed a workers' compensation claim seeking death benefits, which were allowed administratively. The employer appealed this matter to the common pleas court pursuant to R.C. 4123.512, and filed a motion for summary judgment essentially arguing that as a "fixed situs" employee at the restaurant, benefits should not be paid. The trial court rejected this position, and granted the claimant's motion for summary judgment, and the employer appealed.

The Seventh District affirmed the trial court and allowed the claim. The court began with a discussion of the "coming and going" rule and its exceptions, including when the employee is on a "special mission" for the employer. For this exception to apply, the court noted that the mission, task, errand, or service "must be the major factor in the journey or movement, and not merely incidental thereto, and the mission must be a substantial one." In this case, Wining was neither commuting to nor driving home from work, and the sole purpose of his excursion that evening was not incidental to his commute to work because he was only operating his vehicle that evening to deliver the keys to Howard. It was also determined that Wining's mission was of "substantial" importance to the employer because it was done to effectuate a proper and secure lock-up of the employer's premises. Therefore, the appellate court affirmed the trial court's determination that the "special mission" exception applied and the claimant's estate was entitled to death benefits.

Wining provides a succinct explanation of the reasoning behind the "coming and going" rule and the "special mission" exception. These cases often turn on whether the mission was "substantial," and this case may ultimately be one of the few cases where this exception is applicable.

If you have any specific questions, or would like to discuss these cases or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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