

## **WORKERS' COMPENSATION SHOP TALK**

**QUESTION: For workers' compensation purposes, is an employer providing a free parking to an employee the same as requiring an employee to park in a specific location?**

Parking lot cases consume more than their share of oxygen in workers' compensation. This is due to the "coming and going" rule, and litigation regarding its various exceptions. Distinctions often turn on "control" of the parking area, and whether an employee is instructed or required by the employer to park in that location. Recently, the Eighth District Court of Appeals considered a case involving an employee who was provided a parking pass, and whether that act alone constituted an assigned parking lot over which the employer had control.

*Parrish v Cavaliers Holdings, LLC*, 2019-Ohio-89, concerned a guest services employee who worked at an arena in downtown Cleveland. The employee was injured when he fell in an enclosed, indoor walkway connecting the arena to another building. The claimant's employer acknowledged that it provided a free parking pass that allowed him to park in the lot. A workers' compensation claim was filed, which was denied administratively based upon the "coming and going" rule. The claimant filed an appeal to the Cuyahoga County Court of Common Pleas, which granted summary judgment to the employer, finding that the claimant did not sustain his injuries while "in the course of his employment." This prompted an appeal as of right to the Ohio Court of Appeals, Eighth Appellate District.

The Eighth District affirmed, finding that the claimant had not met his burden to demonstrate an exception to the "coming and going" rule. The claimant contended that his fall occurred in the "zone of employment" because his employer controlled where he parked his car and his means of egress to his workplace. He claimed that he had no choice but to park at the parking lot designated by his employer, and use the walkway to reach the arena. However, the Court rejected this argument, finding that the employer merely provided the claimant with a free parking pass, which he chose to utilize. There were clearly other parking options available, including many street level parking lots in other garages immediately surrounding the arena. Notably, these would not have been "free," but the claimant's place of parking was not "assigned." In addition, the Court rejected the notion that the employer controlled the area where the injury occurred. Both the parking lot in which the claimant parked and the walkway to the arena were open to the public. While the walkway's proximity of the scene of the accident was significant, the Court found that the claimant had failed to prove the other elements of the "totality of the circumstances" exception.



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Parrish stands for the proposition that “free parking” is not the same as requiring an employee to park in a specified lot. The claimant had choices, albeit paid ones, which would have allowed him to avoid the location where the accident occurred, but chose free parking.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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