From: Don Drinko
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Gallagher Sharp Shop Talk: Workers' Compensation

Question: Does Ohio recognize the "dual purpose" doctrine?

Many injuries that occur while traveling for business will involve some degree of non-business activity. Ohio has long-since adopted a two-pronged approach to determine whether an injury occurred "in the course of, and arising from" the injured worker's employment which applies to all claims. *Fisher v. Mayfield,* 49 Ohio St.3d 275 (1990). Other jurisdictions have concluded that a compensable injury can sometimes arise from activity that has both a business and personal purpose, but this "dual purpose" (sometimes called "dual intent") doctrine has never been adopted in Ohio. On October 21, 2014, the Supreme Court of Ohio issued an opinion which gave further guidance to courts presented with injuries which occur in "dual purpose" situations.

Friebel v. Visiting Nurse Assn. of Mid-Ohio, Slip Op No. 2014-Ohio-4351, involved a nurse who was paid to provide nursing services at the homes of her patients. On weekdays, she would be paid travel time and mileage (less mileage to the office whether or not she went there), but on weekends there was no office deduction. On a Saturday in January, 2011, the claimant was scheduled to visit a patient at her home. On the way to the appointment, she elected to take her children and two friends to a mall. Before reaching the mall, an automobile accident occurred which resulted in injuries to the nurse. She filed a workers compensation claim, which was allowed by the BWC over the objections of the employer, who contended that the claimant had not yet begun her employment when the accident occurred. The claimant contended that she was on the way to her appointment, and therefore she was acting in the "course and scope" of her employment, or at a minimum had a "dual purpose." The employer appealed, and a DHO upheld the appeal, a decision that was later overturned by an SHO for the Industrial Commission, based upon the fact that the mileage would have been paid for the trip. The employer appealed to the Richland County Court of Common Pleas, who granted the employer summary judgment. An appeal to the 5th District Court of Appeals vacated that judgment, using language referencing "dual intent" and stating that the claimant would not have been at the scene of the accident but-for her work.

The Supreme Court of Ohio accepted a discretionary appeal from the 5th District, reversed and remanded the matter for further factual findings, but before doing so clarified Ohio's position on the "dual purpose" doctrine. Writing for the majority, Chief Justice O'Connor discussed the history of the "dual purpose" doctrine, and the fact that it has been rejected in Ohio. *Cardwell v. Indus. Comm.*, 155 Ohio St. 466 (1951). "Even when work creates the necessity for travel and the travel includes a personal purpose, workers' compensation benefits are available only for an injury that occurs in the course of and arising out of employment." Chief Justice O'Connor cited the core analysis that is applied to every claim: 1) whether the time, place and circumstance demonstrate the injury occurred in the course of employment; and 2) whether in the "totality of the circumstances," there is sufficient causal connection between the injury and employment to establish that the injury arose from employment. The Court went on to state, without equivocation, that "the dual-intent or dual-purpose doctrine does not have a place in analyzing workers' compensation claims in Ohio." Justice O'Neill wrote a dissent finding that the 5th District did not rely on the "dual purpose" doctrine in its opinion, that it applied the proper standard, and therefore the appeal was improvidently allowed.

Friebel is odd, in that most of the important parts of the opinion are probably *dicta* aimed at the Court of Appeals' use of language. While the Court of Appeals mentions "dual intentions" several times, it does not proclaim a doctrine or attempt to distinguish *Cardwell*. The takeaway from the opinion is that the Court wished to instruct claimants, courts, and hearing officers that a claimant's subjective "intent" is irrelevant. 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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