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

QUESTION: If a fixed-site employee punches out for lunch, and falls while exercising in the parking lot, is her injury compensable?

Parking lot cases are the most difficult workers' compensation claims to predict or explain. It is well established that to be compensable under Ohio's workers' compensation system, an injury must: (1) occur "in the course of" employment; and (2) "arise out of" that employment. R.C. § 4123.01(C). The first requirement refers to time, place, and circumstances, while the second refers to causal relationship. Parking lot cases are normally decided based upon the second prong, and consider factors such as proximity to the scene, degree of control maintained by the employer, and benefits to the employer from the injured employee's presence at the scene of the accident. *Fisher v Mayfield*, 49 Ohio St. 3d 275 (1990). Recently, the Ninth Judicial District considered a case involving an employee who slipped and fell in a parking lot during her lunch hour, and whether this injury "arose out of" her employment.

White v Quest Diagnostics, Inc. 2018-Ohio-4309, concerned a data entry clerk who was injured in June, 2016. After clocking out for lunch, the claimant exited the building and headed for an employer-owned parking lot where she intended to walk during her lunch hour. The parking lot was under construction, and there were portions of it that contained both complete and "incomplete" pavement. While crossing the lot, the claimant slipped on a piece of completed pavement, causing her to fall and break her arm. A workers' compensation claim was filed, which was denied in its entirety administratively. The claimant appealed to the Summit County Court of Common Pleas, and both parties filed motions for summary judgment. The trial court granted the claimant's motion and denied motions filed by the Administrator and employer, prompting an appeal as of right to the Ohio Court of Appeals, Ninth Judicial District.

The Ninth District affirmed, holding that the trial court correctly concluded that the claimant's injuries were compensable. The Court began by reciting the applicable law, and in particular the history of "coming and going" exception to compensability of claims. The employer argued that the "coming and going" rule did not apply, likely because the claimant never left the employer's property. The Court found that the injury in this case clearly occurred in the "zone of employment" because the employer owned the parking lot, and the employer failed to cite any authority for its argument that the existence of a construction project terminated that right to control. The employer argued that the applicable precedent was *Tamarkin Co. v Wheeler* [employee attempting to perform a vehicle repair in parking lot while on the clock] and *Whissman v Pro-Fab Industries, Inc.*, [injury resulting from an off-the-clock competition on the employer's premises.] The Court rejected these arguments, noting that *Tamarkin* involved an employee who was not on an authorized break and that a broken mirror was not a "natural hazard" found in parking lots, while *Whissman* involved workers gathered hours before their shift, and participating in an activity where the company received no benefit. In the case at bar, the Court found that the claimant was injured on company property within a short time of clocking out, and was injured by in a manner that is consistent with parking lots. Because the

claimant was within the “zone of employment,” this qualified as an exception to the “coming and going” rule, and established compensability as a matter of law.

White is typical of many “parking lot” cases, which are very fact-specific and tend to weigh heavily in favor of allowance. At best, it can be said that a lack of a consistent standard of care often leads to inconsistent results.

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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