

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

QUESTION: Is an employee who travels to different job sites on a daily basis, but works at those sites all day, a “fixed site” employee and therefore subject to the “coming and going” rule?

We are all aware of Ohio’s “coming and going” rule, which prevents “fixed site” employees from receiving workers’ compensation benefits for injuries that occur while traveling to or from the fixed employment site. *MTD Products, Inc. v. Robatin*, (1991) 61 Ohio St.3d 66. Recently, the Ohio’s Eleventh District Court of Appeals considered a case involving an employee who traveled to a different “fixed site” on a daily basis, whether that qualified him as a “fixed site” employee, and whether the “special hazard” exemption required that he receive benefits.

Palette v Fowler Elect. Co, 2014-Ohio-5376, concerned an employee who was injured in an automobile accident on January 16, 2012. The claimant was an HVAC technician who regularly performed repair work at customer premises on a regional basis, but was injured while en route to a meeting at the employer’s offices. He claimed that the accident arose out of his employment with the employer because he was traveling to a mandatory meeting at his workplace at the time of his injury. A workers’ compensation claim was filed, which was denied by the Administrator, prompting an appeal to the Industrial Commission of Ohio. A District Hearing officer affirmed the denial, finding that because he was traveling to a fixed site at the time of the injury, he was subject to the “coming and going” rule. Another appeal ensued, and a Staff Hearing Officer affirmed the DHO order. An appeal to the Common Pleas Court followed, and both parties filed motions for summary judgment. The trial court ultimately granted the employer’s motion, finding that the employee was a “fixed site” employee at the time of the accident, and therefore the injury, which occurred while traveling to the employer’s offices, was not compensable. The claimant then filed an appeal to the Eleventh District Court of Appeals as of right.

The Eleventh District affirmed, finding that the employee was in fact a “fixed site” employee, and that the “special circumstances” exception did not apply. The Supreme Court’s definition of “fixed situs” employees includes those who “commence his or her substantial employment duties only after arriving at a specific and identifiable workplace designated by the employer,” regardless of the fact that the claimant may be reassigned to different workplaces on a weekly or daily basis. *Ruckman v. Cubby Drilling, Inc.* (1998), 81 Ohio St.3d 117. In the case at bar, the evidence revealed that the claimant commenced his duties servicing heating or cooling units when arriving at a particular job site. The claimant typically only went to the office once a week to attend meetings and submit his paperwork, and it was during his travel to the office that the accident occurred. The evidence submitted with the motions reflected that the work done by the claimant in the three months before the accident was concentrated in a four county radius, and while the work site often changed on a daily basis, this change was contemplated by the Supreme Court in *Ruckman*. The Court also rejected the claimant’s argument that *Ruckman* was distinguishable because he often did more than one job in a given day, finding that the issue centers on when *substantial* job duties (not picking up parts or dropping off paperwork) are

commenced. The Court finally rejected the claim that the “special exemption” exemption applied, finding that the risk presented by traveling to the office presented no “special hazard.”

Palette does an excellent job discussing the issues presented by the “coming and going” rule and whether an employee is a “fixed situs” employee. The decision reflects the tendency of Ohio courts to conclude that employees who perform their work at sites designated by their employers are “fixed situs” employees, despite the fact that those sites may change on a daily or even hourly basis. 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.

Have a safe and happy New Year.

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