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Gallagher Sharp Shop Talk: Workers' Compensation

Question: What is the most recent Ohio decision construing the "coming and going" rule, and specifically whether a claimant was a "fixed" site employee?

In Ohio, the "coming and going" rule generally precludes workers' compensation claims for injuries incurred while traveling to or from a "fixed" work site. Recently, the Ohio Court of Appeals, Eighth Appellate District, was presented with the following question: Is a police officer a "fixed site" employee because on the day he was injured, he was traveling to a "fixed site" (i.e., a courthouse)?

Klamert v. Cleveland, 186 Ohio App.3d 268, 2010-Ohio-443, concerned a detective for the City of Cleveland narcotics unit, who was injured in an accident while riding a personal motorcycle. The officer contended that he was riding into the city because he was served with a subpoena to testify before a grand jury. The detective submitted a workers' compensation claim, which was denied by the City of Cleveland, prompting an appeal to the common pleas court pursuant to R.C. 4123.512. The BWC moved for summary judgment, citing the "coming and going" rule and alleging that the detective was acting outside the "course and scope" of his employment when he was injured. The City joined the motion, which was granted by the trial court, prompting an appeal as of right.

On appeal, the Eighth District reversed, concluding that a genuine issue of material fact existed as to whether the claimant was a "fixed site" employee. Citing the seminal "coming and going" case, *Ruckman v. Cubby Drilling, Inc.* (1998), 81 Ohio St.3d 117, the Court cast doubt on the claimant's argument that he was a "semi-fixed" site employee, and found a genuine issue of material fact existed regarding the claimant's status when considering the entirety of the claimant's duties as a detective. The Court specifically rejected the BWC's contention that the detective was a "fixed-site" employee because he was traveling to a fixed site on the day he was injured as "too narrow." Taken together, the claimant's duties as a narcotics detective created an issue of fact as to whether the "coming and going" rule applied.

Klamert certainly contains a fairly broad reading of *Ruckman* and its progeny. Certainly, it reinforces the principle that when analyzing a "coming and going" claim, the totality of the employee's duties should be considered.

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