CASE NO. 03402 CRB-04-96-08
CLAIM NO. 0400021009 : COMPENSATION REVIEW BOARD

TINA GRECO
CLAIMANT-APPELLANT : WORKERS' COMPENSATION COMMISSION

v.

GRECO AUTO PARTS : FEBRUARY 4, 1998
EMPLOYER

and

LIBERTY MUTUAL INSURANCE CO.
INSURER
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by Steven DeFrank, Esq., Jacobs, Grudberg, Belt & Dow, P. C., 350 Orange St., P. O. Box 606, New Haven, CT 06503.

The respondents were represented by Kevin Maher, Esq., Maher & Williams, 1300 Post Road, P. O. Box 550, Fairfield, CT 06430-0550.

This Petition for Review from the August 8, 1996 Finding and Dismissal of the Commissioner acting for the Fourth District was heard April 4, 1997 before a Compensation Review Board panel consisting of the Commission Chairman Jesse M. Frankl and Commissioners James J. Metro and John A. Mastropietro.

OPINION

JESSE M. FRANKL, CHAIRMAN. The claimant has petitioned for review from the August 8, 1996 Finding and Dismissal of the Commissioner acting for the Fourth District. She argues on appeal that the trier erred by finding that her injury did not arise

out of and in the course of her employment under the doctrine espoused in Dombach v. Olkon Corporation, 163 Conn. 216 (1972). We affirm the trial commissioner's decision.

The trier found that the claimant worked for Greco Auto Parts, a family-owned business, on February 14, 1995. She was involved in an automobile accident on that date at about 4:15 p.m., while driving on Route 34 in Derby. The claimant, who has worked for Greco Auto Parts for 13 years, normally works from 8:00 a.m. to 6:00 p.m. five days per week, with a one-hour lunch break centered at noon. She is supervised by her older sister, an officer in the company.

Although primarily an office worker, the claimant occasionally finds it necessary to go out on the road to collect checks from clients. On the date of her accident, she had scheduled a doctor's appointment with her personal physician for 4:00 p.m. She was given permission to attend the appointment, and was to stop along the way at two businesses to pick up checks for Greco Auto Parts. She drove her own car, for which the employer supplied gas, leaving the store at around 2:00 that afternoon. She drove to Lombard Motors in North Haven, and then to New Haven to the offices of A&A. She picked up checks at both places, staying less than five minutes at each stop. She was then en route to her doctor's appointment when the accident occurred.

The claimant, who lives in Woodbridge, alleged that she intended to return to work after her appointment, although she did not do so because of her accident. Her sister testified that Greco Auto Parts encouraged its employees to do personal business on company time. The commissioner found that the doctor's office was at least a 45-minute ride from the West Haven auto parts store, and that the claimant was en route to that appointment at the time of her accident. Notwithstanding the testimony of the claimant

and her employer's consent to her attending that appointment, the commissioner found that her activities evinced an intent not to return to work after her appointment. He also found that the trip she was engaged in at the time of her accident would have occurred whether or not there were business tasks preceding it, and that the trip was completely personal in nature. As the claimant was not acting in furtherance of her employer's business at the time of the car accident, the trial commissioner dismissed her claim for benefits. The claimant has appealed that decision.

The claimant argues on appeal that the claimant's car accident arose out of and in the course of her employment under the "dual purpose" trip doctrine in Dombach, supra, and that her trip to the doctor was not subject to the "substantial deviation" test referred to by the commissioner in ¶ "h" of his conclusions because she had obtained specific permission from the employer to take care of her appointment. We disagree.

In order to demonstrate a causal connection between an injury and one's employment, a claimant must establish that the claimed injury arose out of and in the course of her employment. Spatafore v. Yale University, 239 Conn. 408, 417-18 (1996). "Proof that the injury arose out of the employment relates to the time, place and circumstances of the injury." Id., 418, *quoting* McNamara v. Hamden, 176 Conn. 547, 550 (1979). "Proof that the injury occurred in the course of the employment means that the injury must occur (a) within the period of employment; (b) at a place the employee may reasonably be; and (c) while the employee is reasonably fulfilling the duties of the employment or doing something incidental to it." Spatafore, supra, *quoting* McNamara, supra, 550-51. This determination is a question of fact for the trial commissioner. Spatafore, supra; Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988).

Ordinarily, an injury is not compensable when it is sustained by an employee on a public highway while traveling to or from his place of employment. Morin v. Lemieux, 179 Conn. 501, 505 (1980). However, several exceptions to that rule have been carved into our law. When an employer furnishes transportation as a condition of employment, injuries suffered while using that transportation have been held compensable. Id. Also, activities relating to the personal comfort of an employee have been held to be within the scope of her employment, such as obtaining refreshments or using the lavatory facilities. Bell v. U.S. Home Care Certified of Connecticut, 13 Conn. Workers' Comp. Rev. Op. 294, 296, 1792 CRB-1-93-8 (April 21, 1995), *affirmed*, 40 Conn. App. 934 (1996) (per curiam), *citing* Renckowski v. Yale University, 11 Conn. Workers' Comp. Rev. Op. 48, 50, 1292 CRD-3-91-9 (March 18, 1993).

In Renckowski, this board stated that injuries involving issues of personal comfort occurring off the employer's premises require a stricter scrutiny as to whether the injury occurred while the employee was reasonably fulfilling the duties of the employment or doing something incidental to it. Id., 53. The trial commissioner's findings that the claimant was not doing anything incidental to her employment at the time she was injured and that she had substantially deviated from the duties of her employment were material to the question of whether the "personal comfort" doctrine might apply to this case. They also have a bearing on the closely related doctrine we recently applied in Kish v. Nursing Home and Care, 16 Conn. Workers' Comp. Rev. Op. 83, 3068 CRB-2-95-6 (Nov. 12, 1996), where we upheld a trier's conclusion that a claimant was still within her employment duties when she stopped by the side of the road to mail a personal card while on her way to pick up an item for a home health care patient. By finding that the

claimant had substantially deviated from her employment, the commissioner precludes the use of either doctrine to afford the instant claimant an exception to the "coming and going" rule.

Perhaps the most well-known case regarding the "coming and going" rule is Dombach, supra, in which our Supreme Court held that an accident occurring during a journey undertaken for both business and personal reasons could be held compensable. "When a trip serves both business and personal purposes, it is a personal trip if the trip would have been made in spite of the failure or absence of the business purpose and would have been dropped in the event of failure of the private purpose, though the business errand remained undone; it is a business trip if a trip of this kind would have been made in spite of the failure or absence of the private purpose, because the service to be performed for the employer would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey." Id., 224.

In Dombach, the claimant had been driving north on the New York Thruway (Route 87) en route to both Skaneateles, New York, for a business appointment, and Toronto, Ontario, for personal reasons, when he was involved in a very serious accident shortly after crossing the Tappan Zee Bridge. Although his intent was to drive to Toronto first, the Court found that his service to his employer was a concurrent cause of his being in the place he was at the time of the accident, as Skaneateles (just south of Syracuse) is en route to Toronto, and the claimant would have had to drive north on Route 87 to get there as well. Citing Judge Cardozo's opinion in Matter of Marks v. Gray, 167 N.E. 181, the Court explained that the portion of the claimant's trip from Stamford to Skaneateles

had to be made for business reasons, and was unquestionably for the employer's benefit and with its express direction.

The claimant argues that, under Dombach, the pertinent inquiry is whether the employment has set the traveler forth on his journey. She contends that in the instant case, she would not have gone to the doctor at that point in the afternoon had her employer not sent her on an errand for the benefit of the business. Thus, under her reasoning, the employment created the necessity for travel in the first instance, and she scheduled her doctor's appointment to coincide with a business trip she already had to make. We do not agree that such reasoning properly applies the Dombach test.

Unlike the facts of Dombach, where the accident occurred at a point south of both Skaneateles and Toronto, the accident here occurred after the business portion of the trip had been terminated. There was clearly no benefit to the employer in the claimant seeing her personal physician, and the claimant would not have been driving through Derby and Ansonia if she had not had an appointment with her doctor. Thus, there was no benefit to the employer for her to drive west on Route 34 after finishing up her business in New Haven. That portion of the claimant's journey was solely personal, and the commissioner properly ruled that, under the facts found, the accident that occurred during the claimant's trip did not arise out of or in the course of her employment.

We thus affirm the trial commissioner's decision.

Commissioners James J. Metro and John A. Mastropietro concur.