CASE NO. 5815 CRB-3-12-12 : COMPENSATION REVIEW BOARD
CLAIM NO. 300094794

STEVE MCMORRIS
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: NOVEMBER 19, 2013

CITY OF NEW HAVEN
POLICE DEPARTMENT
EMPLOYER
SELF-INSURED

and

CIRMA
ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by George H. Romania, Esq., Law Offices of George H. Romania, 2653 Whitney Avenue, Hamden, CT 06518.

The respondents were represented by Anne K. Zovas, Esq., Pomeranz, Drayton & Stabnick, LLC, 95 Glastonbury Boulevard, Suite 216, Glastonbury, CT 06033.

This Petition for Review from the December 5, 2012 Finding and Award of the Commissioner acting for the Third District was heard June 28, 2013 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. This case requires us to apply the precedent in the case of Lake v. Bridgeport, 102 Conn. 337 (1925) to the facts involved in this claim. The claimant was a New Haven police officer injured in a motor vehicle accident commuting between his home and the police station, and he argued that pursuant to precedent and statute his injuries were compensable under Chapter 568. The respondents argued that based on the facts of the case a "deviation" had occurred and the injury was not incidental to the claimant's employment. The trial commissioner found the claimant's position consistent with the law and awarded benefits. We agree with the reasoning behind the Finding and Award and affirm the trial commissioner's decision.

The trial commissioner reached the following findings of fact in his decision. He found the claimant had been a New Haven police officer for ten years and lived in Hamden with his girlfriend, Anais Rivera. The claimant was the father of two children, one, Devin, who lived with him and the other, Jaiden, who stayed with the claimant during court-ordered visitation. Ms. Rivera was the mother of two children, one of whom lived at her home. Ms. Rivera worked the third shift at Yale-New Haven Hospital. On June 25, 2011, the Claimant was working "what is called the C squad or third shift." Findings, ¶ 4. His work hours were "from 11:00 (PM)...to 7:00 in the morning." Id. He testified that due to his and Ms. Rivera's schedule, his children stay overnight at "Winston's Day Care" located on "1897 Chapel Street" in New Haven. Id. The children go to this day care facility primarily to sleep. The claimant testified that both he and Ms.

Rivera drive the children to day care, but on June 25, 2011 Ms. Rivera was not available to do it.

The claimant testified as to his normal route from his home to the New Haven police station, which involved the use of Fitch Street, Whalley Avenue and Ella Grasso Boulevard. Findings, ¶ 6. The Claimant testified he follows this route of travel to work because there are "less lights" and "less stop signs." Findings, ¶ 7. He considered this route "to work fairly easy with no traffic." Id. He testified that he had tried an alternative route along Whitney Avenue to the police station, but rejected it as it had too many lights. The claimant also testified that Ms. Rivera would travel along the Fitch Street and Whalley Avenue route to reach the children's day care center. The claimant was assigned to work on the night of June 25 to June 26, 2011. He left his home for work in his own private vehicle dressed in his fully equipped service uniform including his "duty belt" and service firearm. Findings, ¶ 9. Jaiden and Devin were in his vehicle. The claimant testified as follows why his children were in the car: "Because I was on the way to work and I had to drop them off at day care." Id. The claimant is not aware of any policy that prohibits officers from having passengers in their personal vehicles while on their way into work.

On his way into work on June 25, 2011, the claimant was involved in a motor vehicle accident. The accident occurred "at the intersection of Wintergreen and Fitch" streets prior to dropping off the children at day care. Findings, ¶ 11. The Claimant testified that the accident occurred on his **normal** route of travel into work. He further testified that the accident occurred **prior to the point** when he would have been required to slightly alter his route to drop the children off at the Chapel Street day care center.

(Emphasis in original.) Id. The claimant testified that at a later point in his journey he would need to deviate from his normal commuting route to reach Chapel Street, and then reestablish his normal travel route at the intersection of Chapel Street and Ella Grasso Boulevard. The claimant testified that he had to drop his children off at day care that night because he was scheduled to work. He further provided that he was in the process of bringing the children to the day care center when the accident occurred. The claimant also admitted that he intended to drop them off before continuing on to work that night. He did not intend to bring them to work.

As a result of the accident, the claimant injured his left knee and left foot. He was out of work after the injuries. Surgery was ultimately performed by Dr. Richard Diana on September 12, 2011. He was able to return to work on November 16, 2011 following the surgery. The claimant testified that Jaiden was injured in the accident and received medical treatment at the emergency room, where she was taken in a separate ambulance. The claimant testified that although he was driving his children to day care, he could have performed police duties such as stopping to assist at an accident scene if necessary.

The claimant believes that pursuant to § 31-275(1)(A)(i) C.G.S., he is afforded "portal to portal" coverage for injuries that occur from the time he departs his "place of abode to duty" until he returns to his place of abode at the end of his work shift.[1] The

[1] This statute reads as follows:

Sec. 31-275. Definitions. As used in this chapter, unless the context otherwise provides:
(1) "Arising out of and in the course of his employment" means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer, provided:

claimant is of the position the claim is compensable because, as a portal-to-portal employee, the injury occurred while he was traveling to work on his normal route of travel and before he was required to slightly alter his route. The claimant also believes his work created the need to drop his children off at day care. The respondents are of the position that, at the time of the accident, the claimant was engaged in an act preliminary to work because he had his children in his car and was driving them to day care. They are of the further position that, at the time of the accident, the claimant was performing a purely personal act by driving his children to day care and therefore the injury did not arise out of or in the course of his employment.

Based on these facts the trial commissioner concluded that the clamant was credible and the Commission had jurisdiction over his June 25, 2011 injuries. He concluded the incident occurred within the period of employment and at a place where he may reasonably have been because the claimant was a portal-to-portal employee and was on his way into work. Conclusion, ¶ E. He further concluded the claimant was reasonably fulfilling the duties of employment by driving his vehicle to the police station in order to arrive at work at his scheduled time, conclusion, ¶ F, and the act of driving his children to day care was so inconsequential relative to his job duties, which includes driving into work, that it did not remove him from the course and scope of his employment. Kish v. Nursing and Home Care, Inc., 248 Conn. 379 (1999). Conclusion ¶ G. The trial commissioner did not find that the claimant was engaged in a preliminary

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(A)(i) For a police officer or firefighter, "in the course of his employment" encompasses such individual's departure from such individual's place of abode to duty, such individual's duty, and the return to such individual's place of abode after duty;

act in preparation for work when he was involved in the motor vehicle accident on June 25, 2011, Perun v. City of Danbury, 5651 CRB-7-11-5 (May 5, 2012), Conclusion, ¶ K, and found that the accident occurred on the claimant's normal route of travel into work at a point where he reasonably could have been. The accident occurred at a point before the claimant was required to slightly deviate from his normal route of travel into work in order to drop his children off at day care. Conclusion, ¶ J.

The respondents filed a Motion to Correct seeking to add findings and a conclusion supportive of finding the claimant's injury did not occur in the course of his employment, due to the fact the claimant was en route to a day care center at the time of the accident and had substantially deviated from his normal commute. The trial commissioner denied this motion in its entirety and the instant appeal was pursued by the respondents.

The respondents appeal is based primarily on their interpretation of Perun, supra. They argue that the statutes that govern extended compensability for off-duty injuries for police officers § 31-275(1)(A)(i) C.G.S. and § 31-275(1)(E) C.G.S. must be read together in some fashion. As they view the circumstances, the claimant was still engaged in a "preliminary act" prior to commencing his journey to work at the time of his injury; and therefore, the injury is not compensable. Upon reviewing Perun, as affirmed by the Appellate Court (143 Conn. App. 313 (2013)) we find this misreads the precedent and there is nothing in that case that suggests the trial commissioner's application of the law was in error.

In Perun, the claimant was injured while in his driveway prior to getting into his car and commencing his trip to the police station. The claimant argued that as he was

injured after he left his dwelling he was entitled to "portal to portal" coverage. The respondents however, suggested that this position misapplied the statutes by only looking at the provisions of § 31-275(1)(A)(i) C.G.S. We held that the two statutes governing off-duty police officer injuries had to be read together. "Since the claimant was injured in his driveway prior to commencing his commute to work, the injury in this case is noncompensable. They point out the definition of "abode" in the statute encompasses walkways and driveways; therefore, as a matter of law the claimant had not started his journey. After reviewing the statutes and the case law we find the respondent's interpretation more persuasive and better reasoned." Id.

Our analysis in Perun was based on the fact that pursuant to regulation, statutes and court precedent, see Fine Homebuilders, Inc. v. Perrone, 98 Conn. App. 852 (2006), the claimant's injury occurred at his "abode." The respondents in this case argue that we should extend our definition of "preliminary acts" to include a claimant's activities after leaving his abode; as they believe the claimant's commute to work did not commence until he had dropped his children off at day care. Neither the statute nor the applicable precedent supports this conclusion.

The statute defining "preliminary acts" § 31-275(1)(E) C.G.S. states, "A personal injury shall not be deemed to arise out of the employment if the injury is sustained: (i) At the employee's place of abode, **and** (ii) while the employee is engaged in a preliminary act or acts in preparation for work unless such act or acts are undertaken at the express direction or request of the employer." (Emphasis added.) We are required to apply the plain meaning of the statute pursuant to § 1-2z C.G.S. The statute is written in the conjunctive; which means in order for an "act in preparation for work" to be deemed

outside of the employment it must occur at the claimant's abode.[2] By the plain meaning of the statute the claimant was not engaged in a preliminary act at the time he was injured on a public highway.

The respondents' also place great reliance on Diluciano v. State Military Dept., 3839 CRB-2-98-6 (June 28, 1999), *aff'd*, 60 Conn. App. 707 (2000), *cert. denied*, 255 Conn. 926 (2001) as supportive of their position. This reliance is misplaced as Deluciano is factually distinguishable from this case. The claimant in Diluciano was not a city or state police officer within the statutory ambit of § 31-275(1)(A)(i) C.G.S.; rather, he was a security officer for the state military department whose activities were quite limited and who did not have police academy training. There is no dispute that the claimant herein was a police officer within the scope of the applicable statute.

We note that both our tribunal and the Appellate Court in Diluciano noted the "emergency, on-call nature" of police officers in evaluating the claimant's argument he was entitled to coverage. The respondents focus on this discussion to argue that the claimant should not be entitled to coverage as he had passengers in his vehicle at the time of the accident, and would have been most likely impeded from many types of emergency response at that time as a result. However, we note neither the statute, nor the evidence on the record herein, establishes that the claimant was obligated to drive alone in a motor vehicle to reach the police station. The statute does not prescribe what form of transportation the claimant must use once he leaves his abode to qualify for coverage

[2] See Perun v.City of Danbury, 143 Conn. App. 313 (2013), ''In statutory construction, we endeavor . . . to read the statute as a whole and so as to reconcile all parts as far as possible.'' (Internal quotation marks omitted.) *Martone* v. *Lensink*, 207 Conn. 296, 302, 541 A.2d 488 (1988). Id., 317.

under Chapter 568. Presumably, were the claimant to have used a train, bus, bicycle or car pool as the normal means to reach his work site his ability to respond to an emergency call would be hindered in some fashion, but the plain meaning of the statute herein would not place injuries sustained in the course of such a commute outside the ambit of Chapter 568. The statute makes injuries sustained by a police officer or firefighter traveling between his abode and his place of employment compensable under Chapter 568 and is silent as to the mode of transportation. As we noted, our interpretation of § 31-275(1)(A)(i) is limited by § 1-2z C.G.S, which states:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

We also note, pursuant to Walter v. State, 63 Conn. App. 1 (2001) "[t]he court may not, by construction, supply omissions in a statute or add exceptions or qualifications, merely because it opines that good reason exists for so doing ….." Id., 8. We find to the extent the respondents may challenge the Finding and Award, they are limited to arguing that the claimant engaged in a deviation from his normal commute and that the personal errand he was undertaking made the circumstances of the injury noncompensable.

The respondents argue that such a "deviation" had occurred in this case and therefore, the claimant's injury was noncompensable. The trial commissioner noted, however, that the claimant was exactly where one would expect him to be along his normal commuting route at the point where the accident occurred. Conclusion, ¶ J. The

deviation from the claimant's normal commuting route to reach the day care center had not occurred at that point. Id. In any event, the trial commissioner, citing Kish, supra, found that the act of driving his children to day care during his commute "was so inconsequential relative to his job duties, which includes driving into work, that it did not remove him from the course and scope of his employment." Conclusion, ¶ G.

There is no dispute that the claimant would be covered under the statute and the precedent in Lake, supra, had the motor vehicle accident on June 25, 2011 occurred while the claimant was commuting to work alone. See Perun, supra. "The claimant in Lake v. Bridgeport, supra, was injured while traveling on a public highway on his way to a duty assignment. Had the claimant in this case been injured in the same manner, this injury would unquestionably be compensable." Id. We note that in another case dealing with whether a motor vehicle accident was "incidental to employment" King v. State/Department of Correction, 5339 CRB-8-08-4 (March 20, 2009) the critical point was that "[i]t is also uncontroverted that at 6:30 p.m. on January 18, 2007 the claimant was exactly where one would expect him to be in returning the state-owned car to the location where it was to be garaged that evening." Id. On June 25, 2011 the claimant was exactly where one would expect him to be at the time of the accident.

The respondents argue that although there was no physical deviation during the commute, the presence of passengers in the claimant's car amounted to a substantial deviation in a functional sense. The trial commissioner found to the contrary, citing the Kish case. Kish relied to a great extent on a much older precedent as to whether injuries are within the scope of employment, Labbe v. American Brass Co., 132 Conn. 606 (1946), see Kish, supra, at 386. Labbe stands for the proposition that whether an

employee has deviated from the duties of employment at the time of an injury is a factual matter where an appellate panel must extend great deference.

"The question is one of deviation from employment, where, . . . the rule is well settled that, while deviations may be so slight that they can be said as matter of law not to constitute a departure from employment, or so large that they can be said as matter of law to amount to such a departure, the question is ordinarily one of fact and the conclusion of the trier is final." Id., 609-610.

In Kish the claimant was injured during the course of her business day when she decided to cross a street to mail personal correspondence. While at the point where she was injured was not precisely physically where the employer expected her to be, the trial commissioner concluded the deviation was not material and we affirmed that decision. In this case, the claimant was where he was expected to be. Moreover, he was on a journey that the employer expected him to undertake. The trial commissioner *cited* Dombach v. Olkon Corp., 163 Conn. 216 (1972) as authority to find this injury compensable. We agree as we have long found injuries incurred during "dual-purpose" travel within the scope of Chapter 568 if the trip was such that it would have been performed in the absence of a personal benefit to the employee. See King, supra.

> We cited the seminal case on "dual-purpose" travel injuries, Justice Cardozo's opinion in Matter of Marks v. Gray, 251 N.Y. 90 (1929), 167 N.E. 181, as relied on in Dombach, supra, to uphold the trial commissioner's finding of compensability.
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> To establish liability, the inference must be permissible that the trip would have been made though the private errand was canceled. . . . The test in brief is this: if the work of the employee creates the necessity for travel he is in the course of his employment, though he is serving at the same time some purpose of his own. . . . If, however, the work has no part in creating the

> necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been canceled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk. Dombach, at 224.

King, supra.

Applying the test of Dombach to the facts of this case, had the claimant been directed by the respondent not to report to work on June 25, 2011 he would not have undertaken this journey. While he was bringing his children to day care at the time, were he directed not to report to work he would not have needed to bring them to day care and would have stayed overnight with them at his home in Hamden. In addition, it is uncontroverted the claimant would have made this trip following the same route in the absence of any personal responsibilities. We simply cannot agree with the respondents that the claimant's journey on June 25, 2011 was a "purely personal act" Respondents' Brief, p. 8, as it would never have been undertaken but for the claimant's need to report to the police station for an assigned shift.

The General Assembly has extended greater benefits to police officers and firefighters than ordinary employees as related to the compensability of commuting injuries. The trial commissioner found notwithstanding the respondents' arguments to the contrary that the claimant's injury fell within the ambit of what the legislation was intended to cover. We find the trial commissioner reached a reasonable conclusion based on the facts herein and the respondents offer no persuasive precedent to the contrary.[3]

[3] The trial commissioner denied the respondent's Motion to Correct. We find no error. The trial commissioner is not required to grant corrections that essentially consist of the appellant's view of the facts. See D'Amico v. Dept. of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003) and Liano v. Bridgeport, 4934 CRB-4-05-4 (April 13, 2006). When a trial commissioner denies a

We find no error and we affirm the Finding and Award.

Commissioners Peter C. Mlynarczyk and Charles F. Senich concur with this opinion.

Motion to Correct, we may properly infer that the commissioner did not find the evidence submitted probative or credible. Vitti v. Richards Conditioning Corp., 5247 CRB-7-07-7 (August 21, 2008).