CASE NO. 5950 CRB-6-14-7 : COMPENSATION REVIEW BOARD
CLAIM NO. 601068274

PETER BALLOLI : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : JULY 1, 2015

CITY OF NEW HAVEN POLICE DEPARTMENT
EMPLOYER
SELF-INSURED

and

CONNECTICUT INTERLOCAL RISK MANAGEMENT AGENCY
ADMINISTRATOR
RESPONDENTS-APPELLEES

APPEARANCES:

The claimant was represented by David J. Morrissey, Esq., Morrissey, Morrissey & Mooney, LLC, 203 Church Street, P.O. Box 31, Naugatuck, CT 06770.

The respondents were represented by Anne Kelly Zovas, Esq., Strunk, Dodge, Aiken, Zovas, 100 Corporate Place, Suite 300, Rocky Hill, CT 06067.

This Petition for Review from the June 26, 2014 Finding and Dismissal by the Commissioner acting for the Third District was heard on January 30, 2015 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Randy L. Cohen and Stephen M. Morelli.

# OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the June 26, 2014 Finding and Dismissal by the Commissioner acting for the Third District. We find no error and accordingly affirm the findings of the trial commissioner.

The trial commissioner made the following factual findings which are pertinent to our review. The claimant has been employed as a police officer since February 16, 1998. The parties stipulate that on October 25, 2012, the claimant was scheduled to work an "extra-duty" shift beginning at 7:00 a.m. Extra-duty shifts are assignments whereby police officers take outside jobs for third parties in their capacity as police officers. Although these jobs are outside of a normal patrol shift, they are assigned through the police department.

The claimant has resided in a single-family home located at 82 Cathy Street in Southington since 2005. A driveway that is wide enough to allow two cars to park side by side runs from the garage to the street. On October 25, 2012, the claimant was getting dressed for work when his son asked him to move his car which was blocking his son's vehicle. At some time between 5:30 a.m. and 5:45 a.m., the claimant moved his car from the driveway to the street in front of his house, parking so that the passenger side of the vehicle was facing towards the house and the driver's side was facing towards the street. After moving the car, the claimant went back into the house and finished getting ready for work. At approximately 6:00 a.m., carrying his lunchbox, he walked out to the street

where his vehicle was parked. As he was about to enter the driver's door, he dropped his keys, which ricocheted off of his foot and went underneath the car. When he squatted down and twisted to pick them up, he felt a twinge in his lower back.

The claimant testified that he had not opened the car door before he dropped his keys. He stated that after feeling the twinge in his back, he did not go back into the house but, rather, got directly into the car and left for work. While the claimant was en route to work, the pain in his back became progressively worse and he developed a shooting pain down his leg. The pain reached the point where the claimant knew he would have to go to the hospital and would be unable to carry out his assigned duty. The claimant contacted his supervisor, informing him that he had hurt his back while entering his car on his way to work that morning.

The trial commissioner found the claimant's testimony credible and persuasive but determined that based on the totality of the evidence presented, the claimant did not prove that the injury of October 25, 2012 arose out of and in the course of his employment.[1] Noting that at the time the claimant sustained his back injury, he had not departed from his "place of abode" pursuant to the provisions of § 31-275(1)(A)(i), the trier concluded that the incident was non-compensable and dismissed the claim.[2] The claimant has appealed the dismissal of his claim, arguing that the trial commissioner

[1] Sec. 31-275(1) C.G.S. defines "[a]rising out of and in the course of his employment" as: "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…."

[2] Sec. 31-275(1)(A)(i) C.G.S. states: "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."

erroneously concluded that the claimant had not "departed his place of abode" as contemplated by § 31-275(1)(A)(i) C.G.S. when he injured his back. We are not so persuaded.

We begin our analysis with a recitation of the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), citing Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003).

In reviewing this matter, we note at the outset that the issue before this board is one of statutory construction; the factual findings are not in dispute. It is axiomatic that:

> [w]hen construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature…. In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply…. In seeking to determine that meaning … [we] first … consider the text of the statute itself and its relationship to other statutes. If, after examining [the] text and considering such relationship, the meaning of [the] 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." (Internal quotation marks omitted.)

Pasquariello v. Stop & Shop Cos., 281 Conn. 656, 663-664 (2007).

It is of course a fundamental tenet of workers' compensation law that in order to successfully prosecute a claim for workers' compensation benefits, a claimant must prove that "the injury claimed [1] arose out of the employment and [2] occurred in the course of the employment." (Internal quotation marks omitted.) Labadie v. Norwalk Rehabiliation Services, Inc., 274 Conn. 219, 227 (2005). "Speaking generally, an injury 'arises out of' an employment when it occurs in the course of the employment and as a proximate cause of it." Larke v. Hancock Mutual Life Ins. Co., 90 Conn. 303, 309 (1916). In order to demonstrate whether an injury has occurred "in the course of the employment," a claimant must prove "that the accident giving rise to the injury took place (a) within the period of the employment; (b) at a place [the employee] may reasonably [have been]; and (c) while [the employee was] reasonably fulfilling the duties of the employment or doing something incidental to it." (Internal quotation marks omitted.) Kish v. Nursing & Home Care, Inc., 248 Conn. 379, 383 (1999), *quoting* Mazzone v. Connecticut Transit Co., 240 Conn. 788, 793 (1997).

It is generally held that "employment …does not commence until the claimant has reached the employer's premises, and consequently an injury sustained prior to that time would ordinarily not occur in the course of the employment so as to be compensable…" Labadie, supra, 229. However, our legislature has determined that:

> "[f]or a police officer or firefighter, [however,] 'in the course of his employment' encompasses such individual's departure from such individual's place of abode to duty. . . ." General Statutes § 31-275(1)(A)(i). General Statutes § 31-275(1)(E) and (F) articulate at what point a police officer's or firefighter's course of employment commences and terminates. Section 31-275(1)(E)

> provides in relevant part that "[a] personal injury shall not be deemed to arise out of the employment if the injury is sustained … [a]t the employee's place of abode, and … 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."[3] What constitutes one's "place of abode" is defined in § 31-275(1)(F) and it "includes the inside of the residential structure, the garage, the common hallways, stairways, *driveways*, walkways and the yard."[4] (Emphasis in the original.)

Perun v. Danbury, 143 Conn. App. 313, 316-317 (2013).

In Perun, the Appellate Court affirmed this board's reversal of the trial commissioner's finding of compensability for an injury sustained by a police officer who fell on a patch of ice in his driveway while he was walking to his automobile to drive to work. The Perun court stated:

> Reading § 31-275 (1) as a whole, we hold that a police officer's or firefighter's commute to and from work is part of his or her "course of employment." The commute, however, according to the legislature, does not begin when the police officer or firefighter breaks the plane of his front door: an injury occurring in a driveway does not occur in the course of employment. In other words, police officers do enjoy so-called "portal-to-portal coverage" under the workers' compensation statutes; … but, Perun had not crossed the demarcation line as defined by the legislature when he sustained his injury. (Citation omitted.)

Id., 317.

In the matter at bar, as mentioned previously herein, the gravamen of the appeal is the claimant's assertion that the trial commissioner erroneously concluded that the

[3] Section 31-275(1)(E) states that "[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."

[4] Section 31-275(1)(F) states, in pertinent part, that "[f]or purposes of subparagraph (E) of this subdivision, 'place of abode' includes the inside of the residential structure, the garage, the common hallways, stairways, driveways, walkways and the yard."

claimant had not "departed his place of abode" as contemplated by § 31-275(1)(A)(i) C.G.S. when he injured his back. Rather, the claimant contends that he had "departed from his place of abode as soon as he left his property and walked onto the street." Appellant's Brief, p. 3. As such, the claimant is seeking to distinguish the facts of this matter from the factual scenario in Perun based upon the fact that the instant claimant's car was parked in the street in front of his house rather than in the driveway. The claimant asserts that:

> post-Perun, there is a bright line test. There is a finite, legally defined area known as the claimant's "abode." All other areas, by logic, are not the claimant's abode. The commissioner's factual findings establish that the injury was not within the "abode," as that term is legislatively defined. As a result, once he had crossed the bright line onto public property, he fell within the ambit of CGS Section 31-275(1)(A)(i).

Id., at 5.

We concede that language of § 31-275(1)(F) does purport to limit the definition of "abode" to "the inside of the residential structure, the garage, the common hallways, stairways, driveways, walkways and the yard." However, we also note that Admin. Reg. § 31-275-1(2) C.G.S. states that an "'[e]mployee's place of abode' includes, *but is not limited to*: (a) House, condominium, or apartment; (b) Inside of residential structures; (c) Garages; (d) Common hallways; (e) Stairways; (f) Driveways; (g) Walkways, or (h) Yards. (Emphasis added.) The inclusion of the "but is not limited to" language of this provision indicates that the legislature sought to preserve the discretion of a fact

finder to evaluate on a case-by-case basis the circumstances surrounding a workers' compensation claim for an injury sustained at a "place of abode."

Moreover, we are not persuaded by the instant claimant's assertion that the Perun court set forth a "bright line test," Appellant's Brief, p. 5, governing the definition of "abode" such that the trier had no choice but to conclude that just because the claimant sustained his injuries in a public street rather than in his driveway, his injuries were compensable as a matter of law. Rather, we are inclined to agree with the respondents that the fact that the instant claimant's car was parked in the street rather than in the driveway is "a distinction without a difference." Appellees' Brief, p. 12. This is particularly so given that in the instant matter, as was the case in Perun, the claimant had not yet entered his vehicle when he dropped his keys and, as such, was still engaged in "a preliminary act or acts in preparation for work."[5] Section 31-275(1)(E). We also reject the notion that the Perun decision compelled the instant trier to apply the law governing the definition of "abode" in a manner which clearly contravenes the intent of the provisions of § 31-275(1)(F) C.G.S. and Admin. Reg. § 31-275-1(2) C.G.S. "We have long followed the guideline that [t]he intent of the lawmakers is the soul of the statute, and the search for this intent we have held to be the guiding star of the court. It must prevail over the literal sense and the precise letter of the language of the statute…." Sweetman v. State Elections Enforcement Commission, 249 Conn. 296, 307 (1999).

[5] This board also recognizes the possible unintended consequences of adopting an interpretation of § 31-275(1)(F) C.G.S. which would serve to give an unfair legal advantage to police officers who must utilize on-street parking at their abodes versus those who have driveways.

Furthermore, we have little doubt that the rigid application of the law sought by the claimant would not only deprive a trier of the discretion necessary to assess the evidentiary weight of all the factual circumstances underlying a claim but would also lead to inequitable, and perhaps inexplicable, results because of insignificant differences in those factual circumstances. "[W]e presume that the legislature intends sensible results from the statutes it enacts…. Therefore, we read each statute in a manner that will not thwart its intended purpose or lead to absurd results." Hibner v. Bruening, 78 Conn. App. 456, 459 (2003).

There is no error; the June 26, 2014 Finding and Dismissal by the Commissioner acting for the Third District is accordingly affirmed.

Commissioners Randy L. Cohen and Stephen M. Morelli concur in this opinion.