CASE NO. 6441 CRB-5-21-9 CLAIM NO. 500174687	:	COMPENSATION REVIEW BOARD
SCOTT A. WHITE CLAIMANT-APPELLANT	:	WORKERS' COMPENSATION COMMISSION
v.	;	MAY 31, 2022

CITY OF WATERBURY/
FIRE DEPARTMENT
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

PMA MANAGEMENT CORPORATION
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimant was represented by Justin A. Raymond, Esq., The Dodd Law Firm, L.L.C., 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondent was represented by Daniel J. Foster, Esq., City of Waterbury, Office of Corporation Counsel, 235 Grand Street, Third Floor, Waterbury, CT 06702.

This Petition for Review from the August 31, 2021 Finding and Dismissal by Scott A. Barton, the Administrative Law Judge acting for the Fifth District, was heard January 28, 2022 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo.[1]

[1] Effective October 1, 2021, the Connecticut Legislature directed that the phrase "Administrative Law Judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimant, a Waterbury firefighter, has appealed from a Finding and Dismissal issued on August 31, 2021, by Administrative Law Judge Scott Barton. This decision determined that the claimant's leg injury sustained at his home on March 22, 2020, was not compensable, notwithstanding the "portal-to-portal" coverage afforded first responders pursuant to General Statutes § 31-275 (1) (A) (i).[2] The administrative law judge determined that the claimant had not commenced his commute on a public way when he was injured and the preliminary acts he was performing when injured, prior to commencing his commute, had not been specifically directed by the employer, nor did they inure to the benefit of the employer. The claimant appealed and argued that, based on the facts herein, an injury sustained while carrying a gear bag home between shifts should be deemed compensable based on the mutual benefit provided to the employer. We believe the administrative law judge properly applied the relevant law on this issue and, therefore, we affirm the Finding and Dismissal.[3]

The facts herein are not in dispute and the administrative law judge specifically noted that he found the claimant to be a credible witness. See Conclusion, ¶ AA. The claimant testified that the morning before this incident a deputy chief asked him if he

[2] General Statutes § 31-275 (1) (A) (i) reads as follows: "(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:
(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 . . .."

[3] We note that a motion for extension of time was granted during the pendency of this appeal.

wanted to work an overnight overtime shift at a different firehouse on the evening of March 22, 2020, and he agreed. When he left Station 2 that morning to return to his home in Watertown, he brought his gear bag home with him. The claimant described this as a "giant duffle bag; I guess it would resemble a hockey bag." March 22, 2021 Transcript, p. 13. He testified that the weight of the bag and his gear, including the helmet, coat, boots and gloves, was nearly 50 pounds. See March 22, 2021 Transcript, p. 15. While descending stairs at his residence at 6:30 p.m. enroute to an 8:00 p.m. shift at Station 5, the claimant stated the gear bag bumped him, he lost his balance, fell down the stairs, and sustained leg injuries. The claimant contacted neighbors after the incident, was transported to a hospital, and was out of work for an extended period. He still uses a knee brace, although he testified this does not impede his present work performance.

Much of the testimony at the formal hearing focused on why the claimant brought his gear bag home between shifts. The claimant testified that bringing the gear bag home saved him time since he would not have to stop at Station 2 and he could arrive at Station 5 earlier than his start time. He further testified that he did not leave the bag in his vehicle because the gear cost approximately $5000 and he would be held accountable for its loss. The claimant also acknowledged that the primary reason to bring the gear home was to shorten his commute to his overtime shift and that he did so without being directed by any of his superiors to bring the gear bag home. While the claimant testified that it was common practice amongst firefighters to bring their gear home, he was unaware of any formal direction to do so, and a firefighter could choose to leave his or her gear at the firehouse and pick it up there enroute to an overtime shift. The claimant also testified that while off-duty he was not subject to being called in to deal with a fire emergency and

that if the on-duty firefighters in Waterbury needed emergency backup, they would rely upon mutual aid from neighboring communities' fire departments. See March 22, 2021 Transcript, pp. 38-40.

Based on this record, the administrative law judge concluded that the claimant's injuries occurred at the claimant's residence before he began his commute, and therefore, the statutory "portal-to-portal" coverage provision was inapplicable. See Conclusion, ¶ X, *citing* Perun v. Danbury, 5651 CRB-7-11-5 (May 5, 2012), *aff'd*, 143 Conn. App. 313 (2013). Having held that "portal-to-portal" coverage did not apply in this case, the administrative law judge reviewed the claimant's argument that, as the respondents allowed gear to be brought home, this created a mutual benefit such that his injuries should be deemed compensable. See Conclusion, ¶ M. Based on this analysis, the administrative law judge reached the following conclusions.

> R. Firefighter White admitted he could have driven to Station 2 to pick up his gear prior to presenting to Station 5 for his overtime assignment. There was no evidence presented that this would have had an adverse impact on his arrival at Station 5 or his duties while working overtime at this location. Firefighter White is also not aware of any rule or regulation that requires firefighters to keep their gear with them prior to working extra-duty shifts at a different firehouse.
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> S. I find that the primary reason the Claimant brought his gear home prior to working the overtime shift on March 22, 2020, was to shorten his commute to work that night. I find that this was for the sole benefit and convenience of the Claimant. There was no evidence presented indicating that the Claimant was not be able to arrive for his overtime assignment on time had he driven to his normal firehouse and gathered his turnout gear before travelling to Station 5.
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> T. I find there was no evidence presented that the Respondent, City of Waterbury, received any benefit from the Claimant's decision to carry his turnout gear home prior to his extra-duty

assignment. The Claimant was responsible for arriving at this overtime shift timely, without regard to how he transported his turnout gear to the assignment. The evidence supports a finding that the firefighters themselves found this practice convenient and that it had no mutually-beneficial impact on performing their overtime shift including impacting their arrival time.

U. I find that firefighter White was not directed by any of his superiors to bring his turnout gear bag home with him prior to working the overtime shift on March 22, 2020.

V. Although firefighter White indicated that his supervisors are aware of the practice of bringing turnout gear home when being assigned to a different firehouse for an extra-duty shift, I do not find that this knowledge arises to support a finding that firefighters are directed to bring their equipment home.

W. I find that although the Respondents could have contemplated that their employees, including the Claimant, would bring their turnout gear home prior to working an overtime shift at a different firehouse, this is not sufficient to cause the incident to become compensable. *Floodin v. Henry & Wright Mfg. Co.*, 131 Conn. 244 (1944).

Conclusions, ¶¶ R-W.

As a result, the administrative law judge concluded that the claimant failed to prove that his injuries arose out of and in the course of his employment. Therefore, he dismissed the claim for benefits. The claimant then initiated this appeal, which focused primarily on the argument that the facts presented establish that since the injury occurred while he was moving the gear bag, the injury occurred while the claimant was performing an activity that the employer acquiesced to and from which it received a benefit. We have reviewed this argument and are not persuaded that the administrative law judge's decision was in error.

We will address the "portal-to-portal" issue first as it is clear this injury is outside the statutory ambit of § 31-275 (1) (A) (i). This injury occurred not on a public way, but

at the claimant's "abode" as we discussed in Perun, supra, *citing* Fine Homebuilders, Inc. v. Perrone, 98 Conn. App. 852 (2006). As our Supreme Court pointed out in Balloli v. New Haven Police Dept., 324 Conn. 14 (2016), an injury's locus as being in a public way is a jurisdictional requirement for the application of the "portal-to-portal" statute. Since the injuries in this matter occurred on the claimant's property, and not on a public throughfare, "portal to portal" coverage is inapplicable to this instance. Consequently, we may only find the claimant's injuries compensable if we can identify a different provision of Chapter 568 which would grant this Commission jurisdiction to award benefits.

The claimant argues that we should identify compensability under the mutual benefit concept, arguing that by allowing firefighters to bring gear bags home the fire department received a benefit along with the firefighters who found this practice personally convenient. We note that this argument is presented frequently in "home office" cases[4] and our precedent is that establishing compensability under these circumstances is a fact driven exercise reliant on finding some direction from the employer. See Biggs v. Combined Insurance Company of America, 6247 CRB-7-18-2 (April 12, 2019). In Biggs, the claimant argued that her job required her to bring work home and her injury at her abode prior to travelling to a business meeting should be deemed compensable. However, we agreed with the respondent that, at the time of her injury, the claimant, "was engaged in a preparatory act at her abode prior to commencing her workday, and had not been directed to do so by her employer." Id. We cited our precedent in Matteau v. Mohegan Sun Casino, 4998 CRB-2-05-9 (August 31, 2006), for

[4] See Labadie v. Norwalk Rehabilitation Servs., 4254 CRB-7-00-6 (June 21, 2001), *citing* 3 Larson's Workers' Compensation Law (2000), §§ 16.10[2], p. 16-27.

the proposition that "unless an employee is specifically directed by the employer to work from home, our statutes generally place injuries occurring at an employee's home outside the ambit of Chapter 568." Biggs, supra.

Considering this precedent, we now turn to the facts of this case. We note that pursuant to the facts of this case, the claimant was engaged in a "preliminary act" at his abode prior to commencing work, consistent with the statute.[5] The administrative law judge concluded that the decision of the claimant to bring his gear bag home was for his own personal convenience and was not directed by the respondent nor was an expectation of the respondent. We must ascertain if the record supports that conclusion. At the hearing this colloquy occurred.

> Counsel: Mr. White, why did you have this gear with you at the time?
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> Claimant: I knew I was going for the overtime in the evening at Station 5. So rather than go back to my firehouse, it saves time just to bring it home and then go directly to your duty station in the evening.

March 22, 2021 Transcript, p. 15.

The claimant reiterated this point when counsel for the respondent asked him why he chose to bring gear home. After explaining why, due to risk of loss, he would not leave the gear bag in his truck, he testified as follows.

> Counsel: Understood. Now, would it be fair to say that you brought it with you so you wouldn't have to stop by anywhere on your way to Engine number 5 for your shift?
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> Claimant: That is correct, sir.

[5] General Statutes § 31-275 (1) (E) 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.)

> Counsel: So you did it to shorten your commute to work; is that right?
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> Claimant: Correct.

Id., pp. 30-31.

Counsel continued along this line of inquiry:

> Counsel: Mr. White, did your employer direct you to bring your equipment bag home?
>
> Claimant: No.
>
> Counsel: And did your employer request that you bring it home?
>
> Claimant: No.

Id., p. 36.

The administrative law judge continued with further inquiry as to the claimant's obligations.

> ALJ Barton: Okay. Then the last line of questioning is that although you choose to do that and bring your turnout gear home, it is true, though, that you could go pick up your turnout gear in your home firehouse first before going to your overtime job; that is an option, correct?
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> Claimant: Yes, sir, it is.
>
> ALJ Barton: And as far as you know, it's not written down anywhere that because you're a firefighter you must keep your turnout gear with you at all times?
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> Claimant: I don't know if there's a standard operating procedure on that. I can't give you a yes or no on that.

Id., p. 38.

We, therefore, find the administrative law judge had a basis in the testimony on the record to support his conclusion that the claimant was not directed or compelled to bring his gear bag home; but rather chose to do this as it was personally convenient.

When an employee engages in "off the clock"[6] activities at the direction of and for the benefit of an employer, injuries sustained during such activities are compensable. See, King v. State/Department of Correction, 5339 CRB-8-08-4 (March 20, 2009). In King, while the claimant, a parole officer, was not statutorily entitled to worker's compensation coverage for commuting injuries, the finder of fact found it was an employment obligation for him to drive his state-owned car home at the end of his shift. Therefore, an injury performing this activity was compensable under the mutual benefit doctrine.[7] We cannot find this mutual benefit exists when a claimant, similar to the claimant in Matteau, supra, only found it personally convenient to bring work home.

It also should be noted that the testimony elicited at the hearing indicated the claimant was not subject to being called into work for emergencies, as the claimant testified that under those circumstances the Waterbury Fire Department would call in mutual aid from neighboring fire departments. See March 22, 2021 Transcript, pp. 38-40. Therefore, the precedent in Loffredo v. Walmart Stores, Inc., 4369 CRB-5-01-2 (February 28, 2002), *appeal withdrawn*, A.C. 22869 (October 3, 2002), where a claimant who was injured during a preliminary act at home responding to an emergency call was awarded benefits, is inapplicable to the claimant. The record herein is the claimant chose to work an overtime shift, chose to bring his gear bag home for the sake of convenience, and was engaged in ordinary preliminary acts prior to commencing his commute when he

[6] An extensive discussion of this concept is contained in Dias v. Webster Financial Corporation/Webster Bank N.A., 6153 CRB-4-16-11 (February 15, 2018).

[7] The claimant in King v. State/Department of Correction, 5339 CRB-8-08-4 (March 20, 2009), was also subject to potentially being called in to work on emergency calls, which this tribunal found supportive of extending compensability. In the present case, the trier of fact found the claimant was not at risk of being called in to work unless he had previously scheduled himself for overtime.

was injured. Such an injury is indistinguishable from the precedent in Perun, supra, and simply not within the scope of what our statutes deem a compensable injury.

There is no error; the August 31, 2021 Finding and Dismissal of Scott A. Barton, the Administrative Law Judge acting for the Fifth District, is accordingly affirmed.

Administrative Law Judges Daniel E. Dilzer and Carolyn M. Colangelo concur in this Opinion.