MATTHEW CHAPMAN, Employee,
v.
DENTSPLY CAULK, Employer.

INDUSTRIAL ACCIDENT BOARD OF THE STATE OF DELAWARE

Hearing No. 1397867

Mailed Date: October 1, 2013
September 30, 2013

DECISION ON PETITION TO DETERMINE COMPENSATION DUE

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came before the Industrial Accident Board on September 19, 2013, in the Hearing Room of the Board, Milford, Delaware.

PRESENT:

MARY DANTZLER

JOHN BRADY

Julie G. Bucklin, Workers' Compensation Hearing Officer, for the Board

APPEARANCES:

Brian E. Lutness, Attorney for the Employee

Cassandra F. Roberts, Attorney for the Employer

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NATURE AND STAGE OF THE PROCEEDINGS

On May 15, 2013, Matthew Chapman ("Claimant") filed a Petition to Determine Compensation Due seeking workers' compensation benefits from Dentsply Caulk ("Dentsply") stemming from a July 2, 2012 motor vehicle accident. Claimant seeks acknowledgment that his motor vehicle accident occurred within the course and scope of his employment. Dentsply argues that Claimant was outside of the course and scope of his employment when he was injured in the motor vehicle accident. On September 19, 2012, the Board conducted a hearing on Claimant's petition on the threshold issue regarding the course and scope of employment and this is the Board's decision.

SUMMARY OF THE EVIDENCE

Claimant testified that he worked at Dentsply when he was injured on July 2, 2012. Claimant was paid $11.02 per hour and he clocked in each morning and clocked out at the end of the workday. He did not clock out for lunchtime, so he thinks that he was paid for his lunch break. Each day, Claimant got a thirty-minute lunch break and two paid fifteen-minute breaks that were usually combined with the lunch break,

Claimant's job duties involved pulling items from the aisles at the Dentsply plant to fill orders. He also drove the Dentsply truck between the two Dentsply buildings in Milford to deliver items to different departments. One Dentsply plant is located near Milford Memorial Hospital and the other Dentsply plant is located near McDonald's in Milford.

On July 2, 2012, Claimant was returning to work after his lunch break at Wawa when he was injured in a motor vehicle accident. He was driving his own vehicle and the accident occurred on the public roadway next to Dairy Queen in Milford at 12:27 p.m., according to the police report. The location of the accident was about two miles from Dentsply. Claimant did not

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clock out for lunch and he regularly left the Dentsply premises for lunch. Claimant's supervisor, Keith Sibils, knew that he left Dentsply to go to lunch that day.

Claimant drove the Dentsply truck more often than Mr. Short indicated during his testimony. When extra products needed to be delivered, Claimant was the second driver. Claimant worked from 8:30 a.m. to 5:00 p.m.

each day, but the primary driver left at 2:00 p.m., and Claimant worked the primary driver's shift sometimes.

Carol Kennedy, the Director of Human Resources at Dentsply, testified on behalf of Dentsply. Claimant was not paid for his lunch breaks. The electronic time system automatically deducts thirty minutes from each employee's time each day to account for the lunch breaks, so the employees do not need to clock out at lunchtime. The employees are trained on the electronic time system during orientation and they are told that the thirty-minute lunch break is automatically deducted each day from their hours worked. Employees sign a receipt indicating that they attended orientation. The two fifteen-minute breaks can be added to the lunch breaks to allow for an hour break, but combining the breaks is not encouraged.

Thurman Harvey Short, the Manager of the Logistics Department at Dentsply, testified on behalf of Dentsply. Mr. Short was not Claimant's direct supervisor; he was Claimant's supervisor's supervisor. Claimant's regular job was as a warehouseman in the East Warehouse, so his regular job involved working in the one warehouse all day. Claimant filled in as a substitute driver when the regular driver was unavailable. The regular driver takes six weeks of vacation time per year, so Claimant filled in for him on those occasions. There is only one shift at Dentsply.

Claimant did not have to clock out for his lunch break because the thirty-minute lunch break is automatically deducted from his time. Claimant was able to combine his two fifteen-

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minute breaks with his lunch break. Mr. Short is a salaried employee, but he is not paid for his lunch break either; he is paid for 37.5 hours per week even though he works 40 hours per week.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Course and Scope of Employment

In order to be eligible for workers' compensation benefits, Claimant must prove that the injury he sustained on July 2, 2012 was "by accident arising out of and in the course of employment." DEL. CODE ANN. tit. 19, § 2304. For the following reasons, the Board finds that Claimant has not met his burden of proof.

The employment connection focuses on two aspects: whether the injury was "in the course of employment" and whether the injury arose out of that employment ("scope"). "[Q]uestions relating to the course and scope of employment are highly factual. Necessarily, they must be resolved under a totality of the circumstances test." *Histed v. E.I. DuPont de Nemours & Co.,* 621 A.2d 340, 345 (Del. 1993).

"The term 'in the course of employment' refers to the time, place and circumstances of the injury." *Rose v. Cadillac Fairview Shopping Center Properties (Delaware), Inc.,* 668 A.2d 782, 786 (Del. Super. 1995)(citing *Dravo Corp. v. Strosnider,* 45 A.2d 542, 543 (Del. Super. 1945)), *aff'd sub nom. Rose v. Sears, Roebuck & Co., 616* A.2d 906 (Del. 1996). It covers "those things that an employee may reasonably do or be expected to do within a time during which he is employed and at a place where he may reasonably be during that time." *Dravo,* 45 A.2d at 543-544. In short, "in order to be compensable, the injury must first have been caused in a time and place where it would be reasonable for the employee to be under the circumstances." *Rose,* 668 A.2d at 786.

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By comparison, the issue of "scope" (or "arising out of employment") "relates to the origin of the accident and its cause." *Rose,* 668 A.2d at 786. For the purposes of this prong, it "is sufficient if the injury arises from a situation which is an incident or has a reasonable relation to the employment." *Dravo,* 45 A.2d at 544. In other words, "there must be a reasonable causal connection between the injury and the employment." *Rose,* 668 A.2d at 786; *see also,*

Parsons v. Mumford, Del. Super., C.A. No. 95C-09-031, Ridgely, J., 1997 WL 819122 at *3 (November 25, 1997). However, an "essential causal relationship between the employment and the injury is unnecessary. . . . [T]he employee does not have to be injured during a job-related activity to be eligible for worker's compensation benefits." *Tickles v. PNC Bank,* 703 A.2d 633, 637 (Del. 1997)(citing *Storm v. Karl-Mil, Inc.,* 460 A.2d 519, 521 (Del. 1983)).

The "course" and "scope" requirements articulated by the courts are, to a large extent, codified in the Workers' Compensation Act, which provides that, to be considered covered, an injured employee must be:

> engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment), or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as part of such service at the time of the injury....

DEL. CODE ANN. tit. 19, § 2301(15)a.

In Claimant's case, the injury happened during his lunch break when he was not on the Dentsply premises, or in a location under the control of Dentsply, or in any place where he was required to be for his job. Claimant was leaving Wawa on a public road two miles away from Dentsply when he was involved in a motor vehicle accident. Certainly, he was not in a location where he could reasonably be expected to be or in a location under Dentsply's control and he

was not doing a task that he was expected to do. As such, the Board finds that he was not "in the course of employment."

Even if the Board accepts Claimant's argument that he was paid for his lunch break since it was combined with his two paid fifteen-minute breaks and there is no easy way to determine whether he was on his lunch break or his fifteen-minute breaks, the Board must determine that he was also within the scope of his employment in order for his accident to be considered compensable. To be compensable, an employee's injury must be reasonably related or incidental to the employer's business. The inquiry is "whether there is a sufficient nexus between, [the] employment and [the] injury that it may be said that [the] injury was a circumstance of [the] employment." *Collier v. State,* Del. Super., C.A. No. 93A-06-022, Del Pesco, J., 1994 WL 381000 at *2 (July 11, 1994). A personal deviation from work duties may be so great that an intent to abandon the job temporarily may be inferred, so that the conduct cannot be considered an incident of the employment. Such deviations from the employer's business can break the causal connection so that the injury cannot be said to have arisen out of the scope of employment. *See Bedwell v. Brandywine Carpet Cleaners,* 684 A.2d 302, 305-06 (Del. Super. 1996)(citing *Ford v. Bi-State Development Agency,* 677 S.W.2d 899, 902 (Mo. Ct. App. 1984)).[1] Dentsply argues that the lunch break in this case constitutes such a personal deviation, namely that Claimant was injured as a result of a motor vehicle accident that was personal in nature and

did not occur while Claimant was performing his job duties or while doing anything in the furtherance of Dentsply's business.

After considering the facts in this case and the arguments presented, the Board finds that Claimant was not acting within the scope of his employment at the time of his motor vehicle accident on July 2, 2012. There is no dispute that Claimant was not on Dentsply's premises at the time of his motor vehicle accident. The motor vehicle accident occurred on a public road about two miles away from Dentsply in front of Dairy Queen. There is also no dispute that Dentsply has

no control over the public roads. Also, Claimant was not furthering Dentsply's interests at the time of his motor vehicle accident. Claimant was on his lunch break at the time of the motor vehicle accident and was not working, between deliveries, or on-call for Dentsply. In consideration of the facts presented, the Board finds that Claimant was not on Dentsply's premises at the time of the motor vehicle accident and the accident was no incidental to Dentsply's business; therefore, Claimant's accident is not compensable. *Dietel v. Chartwell Law Offices,* IAB No. 1362880 (June 27, 2011).

Claimant argues that he was a "traveling employee" because he drove the delivery truck between the two Dentsply plants in Milford and, therefore, his motor vehicle accident is a compensable industrial accident. He cites *Bedwell, supra.,* in support of his argument. The Board finds that this case is distinguishable from *Bedwell* in that Claimant's regular job was located in a single plant, which means that he works in a fixed place of employment, whereas Mr. Bedwell was a true traveling employee who traveled between customers' homes to clean their carpets. The fact that Claimant drove the delivery truck occasionally between the two Dentsply plants within Milford does not make him a traveling employee. Furthermore, Claimant was not stopping for lunch on his way from one Dentsply plant to the other on the day of the

accident, as Mr. Bedwell was doing at the time of his accident. At the time of Claimant's motor vehicle accident, he was driving his own personal vehicle on his lunch break from his regular job at a fixed location and was not making a delivery on behalf of Dentsply; therefore, he was not within the course or scope of his employment at the time of his motor vehicle accident.

Since the Board finds that Claimant was not within the course and scope of his employment at the time of the motor vehicle accident, the Board does not need to analyze the other exceptions to the "rules." *Spellman v. Christiana Care Health Services,* Del. Supr. No. 315, 2012 (April 8, 2013).

For the foregoing reasons, the Board finds that Claimant was not acting within the course and scope of his employment when he was injured on July 2, 2012.

STATEMENT OF THE DETERMINATION

Based on the foregoing, the Board DENIES Claimant's Petition to Determine Compensation Due.

IT IS SO ORDERED THIS 30th DAY OF SEPTEMBER 2013.

INDUSTRIAL ACCIDENT BOARD

/s/ Mary Dantzler

/s/ John Brady

I hereby certify that the above is a true and correct decision of the Industrial Accident Board.

/s/_____
Julie G. Bucklin
Workers' Compensation Hearing Officer

Mailed Date: 10-1-13

/s/_____
OWC Staff

Notes:

[1.] For example, it is recognized that an employee who is injured as a result of horseplay is not within the course and scope of employment even if the injury occurred on the employer's premises. *See Seinsoth v. Rumsey Electric Supply Co.,* Del. Super., C.A. No. 00A-09-006, Herlihy, J., 2001 WL 845661 at *6 (April 12, 2001)(employee not in course and scope of employment when injured while engaged in prohibited wrestling during work hours on work premises), *aff'd,* 784 A.2d 1081 (Del. 2001). *See*

also Lomascolo v. RAF Industries, Del. Super., C.A. No. 93A-11-013, Alford, J., 1994 WL 380989 at *2 (June 29, 1994)(an injury occurring on employer's premises, during work hours, while employee was in the work location he was scheduled to be is still not compensable when injury arises from prohibited horseplay).
