COOPER LEVENSON
ATTORNEYS AT LAW

WORKERS' COMPENSATION
CASE LAW UPDATE

Danuta Rosinski v General Motors

Decided l/l6/03 – Not for Publication – A2544 0lTl

Respondent appeals from a final determination by the Workers Compensation court who found petitioner was entitled to death benefits because her husband died while on special mission. The central issue raised on appeal is whether the decedent was engaged in the direct performance of his duties when he suffered a heart attack while waiting outside the hotel in which he was staying after a fire alarm.

We affirm the lower court decision for the following reasons:

Decedent was a union representative and was scheduled by his employer to attend a training session on April 21, l998, along with other employees, in Michigan. Travel arrangements were made through a company who contracted with respondent who also paid for his room, car rental and transportation.

After attending a conference, petitioner went to dinner with a co employee and then returned to the hotel where they went their separate ways. The firm alarm sounded at 3:28 a.m. Decedent went to the parking lot. He was observed to be fully dressed, was laughing like he always does and saying this is a hell of a way to get a wake up call. Decedent then fell backward and was taken to the hospital where he died at 4:35 a.m. The cause of death was hypertensive and arteriosclerotic cardiovascular disease with acute anxiety precipitated by an escape from a hotel room prompted by a false fire alarm being contributory.

In December l994, an EKG revealed that the decedent had sustained an interior wall myocardial infarct of undetermined age. He was diagnosed with congestive heart failure; cardiomegaly; hypertension; arteriosclerotic heart disease; obesity and supraventricular tachycardia.

At trial, petitioner's expert essentially opined that the early morning fire alarm was enough to tip him over the edge and cause the large MI that precipitated his death. Defense expert testified the death was not work related but due to his underlying heart disease although conceding the fire alarm would be a stressful incident that could not be completely excluded as the cause of death.

The lower court found the fire alarm caused enough stress and excitement to cause petitioner's fatal incident considering the underlying cardiac condition. In addition, the lower court concluded that the petitioner was on a special mission for his employer.

On appeal, respondent argued the lower court erred. It contended that decedent was not in the direct performance of his duties and the fire alarm did not involve a substantial condition in excess of ordinary wear and tear.

The Appellate Court disagreed with respondent's contention that the fire alarm was not a substantial condition. There was substantial evidence on the record, including the autopsy report, to support the lower court's finding that the alarm was a substantial stressful event incident work.

The Appellate Court went on to cite the two conditions for application of the special mission exception.

1) the employee must be required to be away from the employer's premises
2) the employee must be engaged in the direct performance of his duties

In this case, the employee was away pursuant to his employer's request on the premises of the very hotel where he was specifically assigned. The fact that he was awakened by a fire alarm does not preclude him from being in the course of his employment.

Harold Gotleib v Showboat Hotel & Casino

Decided 1/27/03 – Unpublished Opinion – A l72 0lTl

Petitioner is appealing the denial of his claim for benefits for a left knee injury due to the lower court's dismissal for lack of timely notification to his employer under 34:l5-l7 as well as the fact that the injury occurred when he slipped and fell on break on a personal errand to purchase lottery tickets under 34:l5-7.

Petitioner states that he was not required to notify his employer unless it became impossible for him to work since that was the manifestation of his injury. Also, he asserts that since he is not allowed to leave casino property during a shift, the injury occurred on premises which were in the control of his employer.

We affirm the lower court's dismissal for the following reasons:

Ken Sylvester is chairman of Cooper Levenson's Workers' Compensation Department with over 20 years of courtroom experience, most of which is dedicated to the handling of workers' compensation files.

Harold Gotleib v Showboat Hotel & Casino *(continued)*

Periodic breaks are required to be taken during a shift and are to be taken in a specific area known as the Cajun Kitchen; during these breaks, dealers are not permitted to leave the casino or go into public areas. On the evening in question, petitioner went to the casino bowling alley to purchase lottery tickets during his break. He was returning to the tables via a route other than that allowed. He slipped and fell on a staircase leading to a public area. He got up, returned to work and did not report the injury.

Over the next two weeks, his leg got worse; however, he still did not report the injury to his supervisor and did not go to the medical office until mid August at which time he reported twisting his ankle. Treatment culminated in surgery.

We affirm that petitioner did not give timely notice to his employer under 34:15-17. In addition, 34:15-7 establishes a two prong test – the accident must "arise out of" and "in the course of" employment. In this case, petitioner was on a personal errand. A risk is incidental to the employment when it belongs to or is connected with what a workman has to do in fulfilling his contract of service.

In order to determine if an injury arose out of employment, there are three categories of risks to be determined:

1) those distinctly associated with the employment
2) neutral risks which do not originate in the employment arena but are the result of uncontrolled circumstances that happen to befall an employee during the course of his employment (also known as the "but for" rule);
3) those which are personal to the employee.

We find that petitioner's injury did not arise out of a risk connected with his job; neither was it a neutral risk. Instead, it was personal risk that did not arise out of his employment. Therefore, there was no compensable injury.

Jorge Calderon v Erfren Jimenez and Elberth Mora

356 NJ Super 513 (2003)

The workers compensation carrier sought judicial review that dual employers were obligated to share responsibility for compensation awarded to the claimant and that the policy issued to the employer by the insurer was effective. The Superior Court held that the insurer did not take the required steps to effect cancellation of the policy and the policy therefore remained in effect. We affirm.

This dispute is between two insurance carriers for two respondents. After trial, the lower court held the respondents were dual employers and obliged to share responsibility for the award and that the policy issued by the carrier for Mora was effective. Carrier appealed arguing the finding of dual employment was erroneous and further it cannot be held to have provided coverage to its putative insured.

Carrier contended that it did not have coverage on the date of the accident. The policy was issued to Mora with an effective date of 8/5/95 to 8/5/96. Carrier cancelled the policy and their computer print out showed an "attempted" cancellation on 10/13/95. The lower court believed that carrier did not use certified mail to effectuate the cancellation. There was a failure on Mora's behalf to pay the initial premium payment. He had tendered a $500 check but it was dishonored by his bank so carrier never collected a penny.

Carrier contended it was not obligated to provide the statutory notice requirements to cancel the policy because the policy was void from inception. We hold that the policy remains in effect unless and until cancelled according to the statutory procedure by certified mail. Carrier was obliged to comply with the requirements of 34:15-81 in order to effect cancellation.

If you have any questions, or would like more information, please call our Workers' Compensation Department at (609) 344-3161.