IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 29, 2009 Session

CHATTANOOGA AREA REGIONAL TRANSIT AUTHORITY ET AL. v. MARY K. COLEMAN

Direct Appeal from the Circuit Court for Hamilton County
No. 07C1148 W. Neil Thomas, III, Judge
Filed December 9, 2009

No. E2008-02160-WC-R3-WC – Mailed September 25, 2009

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Employee injured her ankle as a result of a fall. At the time the injury occurred, she was between two portions of a split work shift. She had undertaken a personal errand at a building adjacent to her workplace, and intended to return to an employee break room at her workplace to await the second half of her shift. The fall occurred on property owned by her employer, but the property was leased to an unrelated third party. The trial court held that the injury was compensable. Employer has appealed, asserting that the trial court erred by finding that the injury arose out of and occurred in the course of the employee's employment. We agree with Employer, and therefore reverse the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit Court Reversed; Case Remanded

JEFFREY S. BIVINS, SP. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

David F. Hensley, Chattanooga, Tennessee, for the appellants, Chattanooga Area Regional Transit Authority and Tennessee Municipal League Risk Management Pool.

Jeffrey W. Rufolo, Chattanooga, Tennessee, for the appellee, Mary K. Coleman.

MEMORANDUM OPINION

Factual and Procedural Background

The material facts in this case are not disputed. Mary Coleman ("Coleman") worked as a bus driver for the Chattanooga Area Regional Transit Authority ("CARTA"). CARTA's offices are located at 1617 Wilcox Boulevard in Chattanooga, Tennessee. Her normal work day consisted of a split shift. During the morning portion of her shift, Coleman worked from 6:20 a.m. until 11:55 a.m. The afternoon portion of her shift began at 2:05 p.m. and ended at 4:35 p.m.

Between 11:55 a.m. and 2:05 p.m., she was free to do as she pleased. CARTA provided a room with vending machines and a pool table on its premises. This area was referred to as the break room. Drivers were permitted to spend part or all of the time between shifts in the break room. Many drivers, including Coleman, often did so. However, they were under no obligation to do so. They also were under no obligation to remain on the premises during the time between their morning and afternoon shifts.

Coleman's injury at issue in this case occurred on January 11, 2007. On that date, she had completed the first part of her shift and had clocked out at 11:49 a.m. She then left CARTA's building to go to the Southern Credit Union ("SCU") in order to withdraw some money to purchase lunch. SCU was located at 1617-B Wilcox Boulevard. The 1617-B building is a separate building from the building housing CARTA's offices. CARTA owned the 1617-B building. SCU is not affiliated with CARTA. SCU was one of two (2) tenants in the building. The 1617-B building was approximately 100 yards from the building housing CARTA's offices.

Coleman walked to SCU to get money for lunch only to discover it was closed. She started to return to CARTA's building. As Coleman exited the building in which SCU was located, she started down a grassy incline as a short cut back to the CARTA break room. Unfortunately, she slipped and fell, fracturing her ankle and injuring her shoulder and back. The accident occurred between 11:56 a.m. and 12:00 noon. She subsequently required several surgeries. CARTA eventually terminated Coleman due to the length of her absence from work.

CARTA denied Coleman's workers' compensation claim, contending that the injury did not arise out of or occur in the course of her employment. CARTA filed suit, seeking a court determination of whether Coleman was entitled to workers' compensation benefits. Coleman filed an answer and then filed a motion for summary judgment on the issue of compensability. That motion was denied. Upon the agreement of the parties, the trial court bifurcated the issues of compensability and disability for trial. The trial court conducted a trial on the compensability issue on August 27, 2008.

At the conclusion of the trial, the trial court ruled that the injury was compensable. The trial court directed the entry of a final order on the compensability issue pursuant to Rule 54.02

of the Tennessee Rules of Civil Procedure. CARTA appeals the trial court's ruling, contending that the trial court erred in finding that Coleman sustained a compensable injury.

Standard of Review

The material facts in this case are not disputed. Therefore, the issues presented in this appeal are questions of law. *Lawrence County Educ. Ass'n v. Lawrence County Bd. of Educ*., 244 S.W.3d 302, 309 (Tenn. 2007); *Billington v. Crowder,* 553 S.W.2d 590, 595 (Tenn. Ct. App. 1977). Questions of law are reviewed *de novo* upon the record with no presumption of correctness. *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

Analysis

CARTA contends that Coleman's injury did not arise out of or occur in the course of her employment with CARTA. In support of its position, CARTA points to two (2) primary factors: First, Coleman was off the clock when the injury occurred and had left CARTA's premises on a personal errand. Although she was in the process of returning to CARTA's premises, there was no requirement that she do so at the time of the injury. Second, the injury did not occur on the premises of CARTA's offices or in CARTA's parking lot.

Coleman contends that this case is controlled by the Tennessee Supreme Court's opinions in *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989), and *Carter v. Volunteer Apparel, Inc.*, 833 S.W.2d 492 (Tenn. 1992). In *Lollar*, the employee was walking in the parking lot after her shift was completed. She slipped and fell in the parking lot while going to her car. The parking lot was adjacent to her workplace and was used by both the public and her co-workers. *Lollar*, 767 S.W.2d at 143-44. The Supreme Court held that:

> a worker who is on the employer's premises coming to or going from the actual work place is acting in the course of employment. We further hold that if the employer has provided a parking area for its employees, that parking area is part of the employer's premises regardless of whether the lot is also available to customers or the general public.

Id. at 150.

In *Carter*, the employee was a sewing machine operator. The employee was scheduled to begin work at 7:30 a.m. on the day of the injury. She arrived at work early and was drinking coffee in the employer's break room. She was injured when she fell in the break room between 6:30 a.m. and 6:40 a.m. *Carter,* 833 S.W.2d at 493. The Supreme Court found the injury compensable, holding that "injuries occurring on the premises at a reasonable time before work begins are 'in the course of employment' even though this period is technically outside the regular hours of employment." *Id*. at 494.

We disagree that *Lollar* and *Carter* are controlling in this case. Unlike the employee in *Lollar*, Coleman did not fall in a parking lot utilized by CARTA employees. Likewise, unlike

the employee in *Carter*, Coleman did not fall in CARTA's break room. Instead, Coleman fell on the leased premises of an unrelated entity.

We find that the case of *McCurry v. Container Corp. of America*, 982 S.W.2d 841 (Tenn. 1998), provides more appropriate guidance in this case. In *McCurry,* the Tennessee Supreme Court addressed situations involving employees leaving or entering the workplace. The Court held as follows:

> In cases where an employee is injured while en route to or from work, the injury is in the course of employment if it occurs on the employer's premises or on a necessary route between the work facility and the areas provided for employee parking. Once the employee has exited the parking area and begins traveling on personal time, away from the employer's premises, he is no longer in the course of employment.

Id. at 845. Moreover, this test is consistent with the general rule "that an employee is not acting within the course of employment when the employee is going to or coming from work unless the injury occurs on the employer's premises." *Howard v. Cornerstone Med. Assocs., P.C.*, 54 S.W.3d 238, 240 (Tenn. 2001).

Applying these holdings to the instant case, we find that Coleman had left her workplace on a purely personal errand. She had not yet returned to her workplace at the time her injury occurred. The accident did not occur on the premises of CARTA or in the parking lot utilized by employees of CARTA. Instead, the accident occurred on the premises of SCU. We recognize that CARTA owned the building in which SCU was located. However, the record does not indicate any affiliation between CARTA and SCU other than landlord and tenant. Coleman has not provided us with any authority, and we have been unable to locate any authority of our own, which would allow us to conclude that mere ownership of the property by CARTA would allow us to impose liability upon CARTA under these circumstances. Therefore, we must conclude that Coleman's injury in this case is not compensable.

Conclusion

For the foregoing reasons, the judgment of the trial court is reversed. The case is remanded to the trial court for further proceedings consistent with this Opinion. Costs are taxed to Mary K. Coleman, for which execution may issue, if necessary.

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JEFFREY S. BIVINS, SPECIAL JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Mary K. Coleman pursuant to Tenn. Code Ann. § 50-6-225(3)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Mary K. Coleman, for which execution may issue if necessary.

PER CURIAM

CORNELIA A. CLARK, J., not participating