

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID R. KING)	
Claimant)	
VS.)	
)	Docket No. 233,037
ANDERSON NEWS COMPANY)	
Respondent)	
AND)	
)	
HARTFORD ACCIDENT AND INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the June 26, 1998, Order for Compensation entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

Judge Benedict awarded claimant preliminary hearing benefits. Respondent and its insurance carrier seek review of that decision contending claimant's accidental injury did not arise out of and/or occur in the course of his employment with respondent because claimant was merely en route ("going and coming") to work. Respondent and its insurance carrier also raised nonjurisdictional issues concerning the admissibility of certain medical records including blood alcohol test results and whether claimant proved he was temporarily totally disabled.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds as follows:

Claimant was injured in a motor vehicle accident on Saturday, March 7, 1998, in Topeka, Kansas. Claimant was employed by respondent as an area supervisor and used a company van in travel and for magazine deliveries for respondent. Claimant was in the Topeka area for the weekend of Saturday, March 7, and Sunday, March 8, 1998, for National Guard duty. He was also going to move some personal belongings from his former Topeka residence to his new residence in Lindsborg, Kansas. Claimant was in the

process of moving because his job duties for respondent had changed from the Northeast to the Northwest Kansas area. Claimant had also arranged to pick up some magazines at respondent's central Topeka warehouse facility for transport back to Lindsborg. Claimant testified that at the time of the accident he was traveling to the warehouse to pick up the magazines before going to his hotel.

The Administrative Law Judge found that since claimant's job required driving and he was furnished the use of a company van, claimant's accidental injury did arise out of and in the course of his employment, citing Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984) and Estate of Soupene v. Lignitz, Kan. Sup. Ct. Docket 79,680 (May 29, 1998). Respondent argues that this claim is not compensable under the "going and coming" rule because the route claimant was taking to the warehouse was the same route he would have taken to his hotel. K.S.A. 1997 Supp. 44-508(f). Therefore, the employment did not expose him to any increased danger or risk.

Employer-directed errands have long been recognized as an exception to the "going and coming" rule. Virtually every jurisdiction which has considered employer-directed errands have found injuries to be compensable if an employee is injured while on an errand or some special mission for the employer.

"Where harm occurs to an employee while he is off the premises of his employer, but while engaged on an errand, or a special mission or duty, in his service, the harm may be compensable; where an employee is injured at a place which he went pursuant to the employer's instructions, the mere fact that such place is not the employee's usual place of employment is not controlling. Where an employee is on a special mission for his employer, he is covered by the act from the beginning of the mission to the end of the return journey." 99 C.J.S. Workers' Compensation § 231.

Thus a classroom teacher was found to be covered while driving home to change clothes in order to chaperon a school party. Heinz v. Concord Union School District, 371 A.2d 1161 (1977) (N.H.). And coverage was found for an appliance salesman who had traveled to a customer's home on a service call and was on his way home when killed in an auto accident. Western Alliance Insurance Co. v. Jecker, 371 SW.2d 904 (1963) (Tex.). In Electric Mutual Liability Insurance Co. v. Industrial Commission, 391 P.2d 677 (1964) (Colo.), coverage was afforded to the family of a deceased employee returning home from an outside call on a customer even though the employee was only one mile from home at the time of the accident and had at some point consumed alcohol sufficient to test .195%. Recognizing that courts generally regard employees whose work requires travel away from the employer's office different from other employees, coverage was also found for an employee who was transporting work materials home with him in order to work on an employment-related project at home. R.J. Reynolds Tobacco Co. v. Industrial Comm'n, 478 N.E.2d 901 (1985) (Ill).

The issue of whether the accidental injury arose out of and in the course of claimant's employment with respondent is a question of fact. Harris v. Bethany Medical Center, 21 Kan. App. 2d 804, 909 P.2d 657 (1995). Clearly, if claimant's accident had occurred when the sole purpose for the trip was for the business purpose of picking up magazines, the injury would come within the Act as meeting the statutory definition for the words "arising out of and in the course of employment." See, e.g., Kindel v. Ferco Rental, Inc., 258 Kan. 272, 899 P.2d 1058 (1995) and Angleton v. Starkan, Inc., 250 Kan. 711, 828 P.2d 933 (1992). The question becomes whether the dual purpose of claimant's trip, i.e. business and personal, takes claimant's travel outside the Workers Compensation Act. The Appeals Board finds that it does not.

As a general rule the "dual purpose" trip is considered compensable.

Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal journey. This principle applies to out-of-town trips, to trips to and from work, and to miscellaneous errands such as visits to bars or restaurants motivated in part by an intention to transact business there. 1 Larson's Workers' Compensation Law, §18.00.

See *also*, Casebeer v. Casebeer, 199 Kan. 806, 433 P.2d 399 (1967); Shindhelm v. Razook, 190 Kan. 80, 372 P.2d 278 (1962).

An exception to the compensability of the dual purpose trip is where the business purpose of the trip was so small or incidental that the trip would not have been taken if the private mission had been canceled. Under this criteria, however, it is not necessary that the business trip would have been taken by the same employee at the same time. See Larson's §§18.13 and 18.21.

Respondent and its insurance carrier also requested review of the ALJ's exclusion of certain evidence and the finding that claimant was temporarily and totally disabled. The Appeals Board does not have jurisdiction to review either issue under K.S.A. 1997 Supp. 44-551(b)(2)(A) and K.S.A. 1997 Supp. 44-534a(a)(2). See Frazier v. Steel & Pipe Supply Company, Inc., Docket No. 201,049 (September 1995); Torres v. DeKalb Swine Breeders, Docket No. 173,738 (July 1996); Ogden v. Evcon Industries, Inc., Docket 230,945 (June 1998).

The Workers Compensation Act is to be liberally construed to bring employers and employees within its provisions and protections. K.S.A. 1996 Supp. 44-501(g). See *also*, Kinder v. Murray & Sons Constr. Co., Inc., 264 Kan. 484, 957 P.2d 488 (1998). The circumstances surrounding claimant's trip and the testimony concerning the purpose of his

travel at the time of his injury, lead to the conclusion that this claim comes within the provisions of the Act.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order for Compensation by Administrative Law Judge Bryce D. Benedict, dated June 26, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1998.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Max C. Schulz, Jr., Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director