An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-1272

NORTH CAROLINA COURT OF APPEALS

Filed: 16 December 2003

DONNIE SPRINKLE,
Employee,
Plaintiff,

v.

North Carolina Industrial Commission
I.C. File No. 021154

LILLY INDUSTRIES, INC.,
Employer

and

LIBERTY MUTUAL
INSURANCE COMPANY, Carrier,
Defendants.

Appeal by defendants from opinion and award entered 7 May 2002 by the North Carolina Industrial Commission. Heard in the Court of Appeals 18 August 2003.

Walden & Walden, by Daniel S. Walden, for plaintiff-appellee.

Davis & Hamrick, LLP, by Shannon Warf Beach for defendants-appellants.

STEELMAN, Judge.

Defendants, employer Lilly Industries, Inc. and carrier, Liberty Mutual Insurance Company, appeal an opinion and award finding plaintiff Donnie Sprinkle's claim compensable under the North Carolina Workers' Compensation Act (Act). For the reasons discussed herein, we affirm.

Plaintiff has been employed by Lilly Industries, Inc. (Lilly) since 1996, when Lilly acquired his previous employer, Guardsman Products Co. (Guardsman). Guardsman manufactured wood finishing products, a line of work which Lilly has continued. At the time Lilly acquired Guardsman, plaintiff was living in Thomasville, North Carolina. He worked as an on-site service representative for his employer's client, Lexington Furniture, which was located approximately fifteen miles from his home. Plaintiff continued in this position for several months after the acquisition. In early 1997, plaintiff told his supervisor at Lilly that he felt he was at a "dead end" and asked whether the company had any opportunities for him to advance his career elsewhere.

In response to plaintiff's request, Lilly offered him a salaried position as an on-site service representative for Webb Furniture in Galax, Virginia. Galax is located approximately 90 miles from plaintiff's residence in Thomasville. At the time of the offer, plaintiff expressed concern to his supervisor about additional expenses that he would incur as a result of traveling and staying in Galax, Virginia.

At its own expense, Lilly maintained a residence where its out-of-town employees could stay during the week. This was less expensive than paying for employees to stay in a motel. Plaintiff was told by his supervisor that Lilly "still had lodging up there [in Galax and] that they would take care of [plaintiff] as far as lodging." Plaintiff was also told by his supervisor that "they would take care of [him], they still knew [that he] had expenses as far as [his] gas and [his] travel and [his] food and [the supervisor] realized it cost [plaintiff] more money and [the supervisor] would take care of them expenses." [Sic].

Plaintiff's work hours in Galax were from 7:00 a.m. to 3:30 p.m. on Monday through Thursday and 7:00 a.m. to 12:00 noon on Fridays. Plaintiff's routine was to drive from his home

in Thomasville on Mondays and stay at the Galax house Monday, Tuesday and Thursday nights. On Wednesday nights, plaintiff drove home to Thomasville. At the end of 1997, Lilly increased plaintiff's salary by $5,000 per year to compensate him for increased travel and food expenses incurred by his staying in Galax. In February 1998, Lilly instituted a bonus plan for plaintiff, in addition to the $5,000 raise, allowing plaintiff to earn a bonus if certain performance standards were achieved.

In March 1998, plaintiff was working extra hours for Lilly to meet the demands of the "market rush" for the spring furniture market in High Point. On Tuesday, 24 March 1998, plaintiff left Lilly's Galax house at approximately 6:30 a.m. on his way to Webb's Galax plant. On that morning, plaintiff was involved in an accident with a tractor-trailer truck that resulted in serious injuries.

On 23 March 2000, plaintiff filed a Form 18 Notice of Accident and Claim of Employee with the North Carolina Industrial Commission alleging that his injuries were compensable under the Workers' Compensation Act.

Defendants' sole assignment of error is that the Full Commission erred in finding plaintiff's claim compensable under the Act. The Commission concluded that "[b]ecause plaintiff's travel to and around Galax, Virginia was contemplated as part of his job with defendant-employer [Lilly], plaintiff's automobile accident of March 24, 1998 arose out of and was in the course of his employment."

Our review of the Industrial Commission's decision is limited to the analysis of: (1) whether any competent evidence in the record supports the Commission's findings of fact, and (2) whether such findings of fact support the Commission's conclusions of law. *Creel v. Town of Dover*, 126 N.C. App. 547, 552, 486 S.E.2d 478, 480 (1997).

In order for an injury to be compensable under the Act, it must arise out of and be in the course of employment. N.C. Gen. Stat. §97-2(6) (2001).

> The general rule is that an accidental injury occurring while an employee travels to and from work is not one that arises out of and in the course of employment. *Powers v. Lady's Funeral Home*, 306 N.C. 728, 295 S.E.2d 473 (1982). The "hazards of traffic are not incident to the employment and are common to the general public," and not covered by the Act. Leonard T. Jernigan, Jr., North Carolina Worker's Compensation Law and Practice §6-3 (3d ed. 1999), citing *Harless v. Flynn*, 1 N.C. App. 448, 162 S.E.2d 47 (1968). This is known as the "coming and going" rule. *Id*.

Tew v. E.B. Davis Elec. Co., 142 N.C. App. 120, 122, 541 S.E.2d 764, 766, *rev. dismissed*, 353 N.C. 532, 548 S.E.2d 741 (2001). There are certain exceptions to this rule.

When plaintiff agreed to go to Galax as a representative to Webb Furniture, he was promised additional compensation to cover additional expenses incurred for travel and lodging. After working in Galax, plaintiff computed his additional costs to be approximately $100 per week. Defendant then compensated plaintiff for these expenses by giving him a $5,000.00 raise. Our Supreme Court has held that where an employer provides transportation or allowances to cover the cost of transportation, injuries occurring while going to or returning from work are compensable. *Puett v. Bahnson Co.*, 231 N.C. 711, 712, 58 S.E.2d 633, 634 (1950). *See also Robertson v. Shepherd Constr. Co.*, 44 N.C. App. 335, 261 S.E.2d 16 (1979); *Williams v. Brunswick County Board of Education*,1 N.C. App. 89, 160 S.E.2d 102 (1968).

In the instant case, the Commission made the following findings of fact that bear on this issue:

> 10. In or about February 1997, plaintiff began working as a sales and service representative for defendant-employer at Webb's manufacturing plant in Galax. Due to the requirements of his work for defendant-employer in Galax, and in light of the long distance from his home, plaintiff usually could not return home each night, thus requiring that he stay overnight in Galax.

12. During his second assignment to Galax, plaintiff stayed during the workweek in lodging provided by defendant-employer rather than in a motel. Defendant-employer maintained a rented and furnished house in Galax for its out-of-town employees who were there during the workweek because the rental house was less expensive than paying motel charges. The house was located about three miles from Webb's manufacturing plant and about three to four miles from one of defendant-employer's laboratories in Galax. All during this time, plaintiff's home continued to be in Thomasville, North Carolina, which was ninety miles from Galax.

16. It was essential that plaintiff have an automobile to perform his job duties and an automobile was part of the employment. Defendant-employer required plaintiff to have an automobile not only to get to and from Galax, but also to perform his job while there. Plaintiff was required to travel from the rented house to Webb and to and from defendant-employer's laboratory in Galax. Plaintiff spent most of each workday going back and forth between Webb's plant, defendant-employer's laboratory, and the rented house. Mr. Green's and Mr. Hiatt's offices were located on the top floor of defendant-employer's laboratory building, while the basement or lower level served as a place to work on finishing and coloring. During the workday, plaintiff's work duties required him to frequently travel from the Webb plant to the laboratory to work on finishing furniture or color panels. Plaintiff's work duties required him to have an automobile to travel between the rented house and Webb Furniture and the laboratory, all located in Galax.

17. Plaintiff usually worked in Galax about fifty-five hours a week. He was not paid by the hour and he did not punch a time clock. Plaintiff was paid a salary without regard to the number of hours he worked each week. He often left the Webb plant at 3:30 p.m. and traveled in his automobile to the laboratory where he continued working. It was defendant-employer's policy to reimburse plaintiff on a unit basis for his "mileage expense" for travel to the laboratory where plaintiff usually spent about forty percent of his work time; however, it was defendant-employer's policy not to reimburse plaintiff on a formal unit basis for "mileage expense" for travel between Thomasville and Galax, or between the rented house and Webb or the lab, but defendant-employer did in fact reimburse plaintiff, as found below.

19. On or about the end of 1997, defendant-employer increased plaintiff's 1997 pay by about $5,000.00, a figure which would in fact compensate him for his increased travel and meal

> expenses to and in Galax. Therefore, by the end of 1997, defendant-employer did substantially reimburse plaintiff for his additional mileage or travel and meal expenses of working in Galax. This reimbursement was as defendant-employer had agreed to do in early February 1997 as a part of its inducement to plaintiff to get him to agree to work in Galax away from his home and family. [Sic].

Each of these findings is supported by competent evidence before the Commission.

Thus, under the rationale of *Puett*, since plaintiff was provided with an allowance to cover his transportation costs, his injury was in the course and scope of his employment. Defendant's assignment of error is without merit.

AFFIRMED.

Chief Judge EAGLES and Judge TYSON concur.

Report per Rule 30(e).