NO. COA04-667

NORTH CAROLINA COURT OF APPEALS

Filed: 19 April 2005

EUGENE MILLS,
Employee,
Plaintiff

v.

North Carolina Industrial Commission
I.C. File No. 163034

SPRINT MID-ATLANTIC,
Employer,

SELF-INSURED (GALLAGHER BASSETT SERVICES, INC.,
Third-Party Administrator),
Defendants

Appeal by plaintiff from an opinion and award entered 5 February 2004 by the North Carolina Industrial Commission. Heard in the Court of Appeals 8 December 2004.

McGougan, Wright, Worley, Harper & Bullard, L.L.P., by Paul J. Ekster and Dennis T. Worley, for plaintiff-appellant.

Cranfill, Sumner & Hartzog, L.L.P., by Cameron D. Simmons and Meredith T. Black, for defendant-appellees.

ELMORE, Judge.

Eugene Mills (plaintiff) appeals from an opinion and award denying his claim for benefits arising out of an injury occurring on his commute from home to work at Sprint Mid-Atlantic (defendant), a communications company. We affirm the opinion and award entered by the Full Commission.

Plaintiff works as a cable splicer for defendant. His job includes setting up new service lines as well as repairing and maintaining existing lines. Plaintiff's normal work day begins when he arrives at defendant's plant. He travels both to the plant before work and home from the plant after work in his own personal vehicle. He is not compensated for his travel going to and coming from work. During the day, defendant provides plaintiff with a company van to travel out to locations that require plaintiff's attention.

On 16 September 1999, plaintiff was injured on his way to defendant's plant. Hurricane Floyd created treacherous driving conditions and caused severe damage on that day. Plaintiff, after leaving his house and attempting to travel his normal route to work, had to go an alternate route because of a fallen tree blocking the road. On the alternate route, plaintiff attempted to cross a small bridge that had, unbeknownst to him, been washed out by the storm. Plaintiff crashed, suffering serious injuries. Plaintiff was out of work for nearly three months, but has since recovered having a zero percent permanent partial disability rating.

The opinion and award of the deputy commissioner denied plaintiff's claim, finding that:

> 15. Plaintiff's employment did not include transportation as part of his employment contract. Plaintiff was not on the premises of defendant-employer at the time the accident occurred. Plaintiff was not on a special errand on the date the accident occurred. Plaintiff had not teamed with a fellow employee to go out to survey the damage. Plaintiff was simply driving to work. Plaintiff was not assisting in any way defendant-employer at the time his accident occurred.

It was based in part on this finding that the deputy commissioner concluded plaintiff's claim was not compensable. The Full Commission's opinion and award, in pertinent part, found that:

> 13. Plaintiff's employment did not include transportation as part of his employment contract.
>
> 14. Plaintiff was not on the premises of defendant at the time the accident occurred.

> 15. Plaintiff was not on a special errand for his employer on the date the accident occurred.
>
> 16. On the date the accident occurred, plaintiff had not teamed up with a fellow employee to go out to survey the damage.
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> 17. The Full Commission finds based upon the greater weight of the competent evidence that plaintiff was injured while driving from his home to work on a day he was regularly scheduled to work. Plaintiff was not assisting defendant in any way at the time his accident occurred, and was not acting in the course or scope of his employment.
>
> 18. Plaintiff failed to prove by the greater weight of the evidence that he sustained an injury by accident out of and in the course of his employment with defendant on September 16, 1999.

Based on those findings the Full Commission also concluded that an injury sustained "while going to or coming from work does not arise out of and in the course of employment." The Commission further concluded that plaintiff's injury did not fall into any known exception to that rule, thus determining his claim was not compensable.

Our review of the Commission's findings that are excepted to by plaintiff is limited to determining whether there was competent evidence in the record to support them. *See Lanning v. Fieldcrest-Cannon, Inc.*, 352 N.C. 98, 106, 530 S.E.2d 54, 60 (2000). We must also determine whether the Commission's findings support its conclusions, a matter that is fully reviewable. *See id*.

Plaintiff excepted to findings 15, 17, and 18, but we find competent evidence in the record to support each of them. Evidence before the Commission established that plaintiff was in route from his home to defendant's plant to *begin* his work. There was no indication that plaintiff was on a special errand for defendant. There was also no evidence that plaintiff was specially called in by defendant, nor was there evidence that he was surveying downed lines for defendant

while on the way in from home. Plaintiff was just attempting to get to work to start what would have been a very busy day. Based on the evidence in the record, we hold that the Commission's findings were supported by competent evidence and will address its conclusions.

Plaintiff argues in his brief that the "going and coming" rule is "in need of a further exception, or its complete abolishment." He characterizes the "line" drawn by this rule and its exceptions as "unfair and arbitrary." Further, he argues that "the hazards of the Plaintiff's route became the hazards of the employment, and his claim should be held compensable."

Our courts have generally held that if an employee is injured while he is on his way to work, or on his way home from work, the injury does *not* arise out of and in the course of his employment. *See Royster v. Culp, Inc*., 343 N.C. 279, 281, 470 S.E.2d 30, 31(1996); *Humphrey v. Laundry*, 251 N.C. 47, 49, 110 S.E.2d 467, 468-69 (1959); *Stanley v. Burns Int'l Sec. Servs*., 161 N.C. App. 722, 725, 589 S.E.2d 176, 178 (2003); *Deseth v. LensCrafters, Inc*., 160 N.C. App. 180, 185, 585 S.E.2d 264, 268 (2003). Yet this rule is by no means absolute.

> Exceptions to this rule have been recognized when: (1) an employee is going to or coming from work but is on the employer's premises when the accident occurs (premises exception). . .; (2) the employee is acting in the course of his employment and in the performance of some duty, errand, or mission thereto (special errands exception) . . . ; (3) an employee has no definite time and place of employment, requiring her to make a journey to perform a service on behalf of the employer (traveling salesman exception) . . . ; or (4) an employer contractually provides transportation or allowances to cover the cost of transportation (contractual duty exception) . . . .

Stanley, 161 N.C. App. at 725, 589 S.E.2d at 178 (internal citations omitted).

The Commission concluded that plaintiff's injury does not fall into any established exception to the "coming and going" rule. We agree. Plaintiff was not on his employer's property but a public road near his home; he was not a traveling salesman; he was also not

receiving any compensation or allowance for his travel. Notably, plaintiff was not on a special errand for defendant, but was just coming in to work before meeting with his team and then going back out into the community in one of defendant's vehicles. He changed his route, as the evidence shows, not to inspect lines on the way into work, but because a tree was blocking his normal route.

Under these circumstances, the hazard of a washed out bridge is not one associated with the employer, as plaintiff suggests, but rather one faced by any driver on the road. *See id*. at 726, 589 S.E.2d at 179 (affirming Commission's denial of claim where an accident related to Hurricane Floyd occurred on employee's trip home from work); *see also Harless v. Flynn*, 1 N.C. App. 448, 459-60, 162 S.E.2d 47, 54-55 (1968) (noting that an automobile accident in an employer's parking lot is a hazard the employer created but one occurring on the road generally is not).

Accordingly, we affirm the opinion and award of the Full Commission denying plaintiff's claim due to the fact that his injury did not arise from or in the course of employment.

Affirmed.

Judges McCULLOUGH and LEVINSON concur.

Report per Rule 30(e).