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WORKERS' COMPENSATION

On the road again: Delaware Supreme Court on the 'going and coming' rule

by Cassandra Roberts

The general rule is that workers' compensation doesn't cover injuries an employee receives going to or coming from work. However, as with any good rule, there are lots of exceptions. The Delaware Supreme Court recently addressed several of thembefore concluding that an employee involved in a car accident didn't meet any of the exceptions to the "going and coming" rule and her injury therefore wasn't covered under workers' comp.

Facts

Mary Spellman was a home health aide employed by Christiana Care's Visiting Nurse Association. Her job entailed assisting patients in their homes with personal hygiene and light housekeeping. She was paid by the hour, wasn't compensated for lunch, and was paid for her travel time between patients but not for traveling from her residence to the first patient of the day or traveling home after her last patient. She also was reimbursed for mileage, but only for traveling from one patient to another. She would occasionally report to a corporate office for meetings or to retrieve supplies, which were kept in her personal vehicle.

On the date of the accident, Spellman's workday began when she checked on patient 1 and patient 2. After those assignments, she had "blocked off" several hours for a personal medical appointment, which had been prearranged with her supervisor. Her travel from the second patient to the medical appointment wouldn't have included mileage reimbursement; moreover, Christiana wouldn't be able to contact her during the personal errand.

Approximately one mile from her second patient and en route to her residence to freshen up before her doctor's appointment, Spellman hit an icy patch of road, and her car careened into a tree. She suffered head and hip injuries.

A tortured path

Spellman's workers' comp claim was denied by the Industrial Accident Board (IAB). The IAB rejected both the "traveling employee with a semi-fixed place of business" argument (which would have exempted her from the going and coming rule) as well as the argument that her trip was a "mixed purpose" trip sufficient to invoke workers' comp coverage. The board found that:

- Spellman was "off the clock" and thus was not acting within the scope of her employment.
- Her trip was not a "special errand."
- There was no mixed purpose that benefited the employer in any way.
- Her decision to go home first and then to a personal appointment was so great a departure from work that it could be deemed a temporary abandonment of the job.

Notably, the board commented that had Spellman been paid for the travel time or mileage, she would have been operating under the course and scope of her employment as a traveling employee.

The superior court upheld the IAB's decision on appeal. Spellman then appealed to the Delaware Supreme Court.

The supreme court noted the "profusion of exceptions" to the going and coming rule and then concluded that the exceptions are "aspects or elements of a fundamental inquiry[—]namely, whether, under the totality of circumstances, the employment contract between [the] employer and employee contemplated that the employee's activity at the time should be regarded as work-related and therefore compensable." Ultimately, the court agreed with the decisions of the IAB and the superior court that the facts in this case supported the finding that Spellman's injury was *not* compensable. *Mary Spellman v. Christiana Care Health Services,* No. 315 (Del. Supreme Court, April 8, 2013).

Bottom line

Workers' comp has many gray areas, and every state's courts interpret the general rules differently. There are many common exceptions to the going and coming rule, but you should make sure you have a workers' comp attorney experienced in your state's law before attempting to apply the exceptions.

developments in Delaware employment law. Questions about individual problems should be addressed to the employment law attorney of your choice.