

**STATE OF VERMONT  
DEPARTMENT OF LABOR AND INDUSTRY**

D. W	)	Opinion No. 06-05WC
	)	
	)	By: Margaret A. Mangan
v.	)	Hearing Officer
	)	
Fletcher Allen Health Care	)	For: Laura Kilmer Collins
	)	Commissioner
	)	
	)	State File No. U-10312

*Submitted on written record and argument  
Record Closed on December 10, 2004*

**APPEARANCES:**

*Mark H. Kolter, Esq., for the Claimant  
Stephen D. Ellis, Esq., for the Defendant*

**RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT**

*In this action involving a motor vehicle accident, claimant and defendant both move for judgment as a matter of law on the issue whether the injuries claimant suffered arose out of and in the course of her employment. It is undisputed that claimant, a nurse practitioner at Fletcher Allen Health Care (FAHC), was in Utah attending a work related conference. FAHC paid for the hotel room. With her on the trip to Utah were her two children, aged 18 and 16, who were to snowboard at a slope 30 miles, a 45-minute drive, from the conference site while their mother attended the conference. Other FAHC employees also traveled with family members. Claimant is the primary caregiver and physical custodian of her two children. On the morning of March 29, 2003, claimant drove her children to the ski area in the vehicle she had rented for that purpose and then returned to the conference. That afternoon, between conference sessions, she set out to pick up her children after their day on the slopes. En route, claimant was involved in a motor vehicle accident that resulted in serious injuries.*

*Claimant argues that the accident arose out of and in the course of her employment with FAHC. Defendant argues that the accident occurred on a personal errand, and therefore is not compensable. Both seek judgment as a matter of law.*

*Workers' Compensation Rule 7 integrates the Vermont Rules of Civil Procedure into the WC process and renders those rules applicable to workers' compensation hearing, including V.R.C.P. 56 (c), an action for summary judgment. Therefore, where there is no dispute of material facts and a party is entitled to judgment as a matter of law, summary judgment is appropriate. See White v. Quechee Lakes Landowners' Ass'n, 170 Vt. 25, 28 (1999).*

*"If a worker receives a personal injury by accident arising out of and in the course of employment..." he or she is entitled to compensation. 21 V.S.A. § 618(a)(1).*

*The arising out of test is one of positional risk, that is if the injury would not have occurred but for the fact that the conditions of claimant's employment placed him there. See Miller v. IBM, 161 Vt. 213 (1993). Usually "[a]n accident occurs in the course of employment when it was within the period of time the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of the employment contract." Id. at 215.*

*In cases such as this where an employee is traveling for her employer, injuries occurring while on the trip are compensable in many circumstances:*

*An employee whose work entails travel away from the employer's premises is generally considered to be within the course of employment continuously during the trip, except when there is a distinct departure on a personal errand. Thus, injuries flowing from sleeping in hotels or eating in restaurants away from home are usually compensable.*

*2 A.Larson and L.K. Larson, Larson's Workers' Compensation Law, 25 (2003).*

*In Vermont, a distinct departure or deviation needs to be substantial to be removed from the realm of the compensable. That determination depends upon the particular facts of each case. Factors which have been identified as bearing on the question include: (1) the amount of time taken up by the deviation; (2) whether the deviation increases the risk of injury; (3) the extent of the deviation in terms of geography; (4) the degree to which the deviation caused the injury. Estate of Rollins v. Orleans Essex Visiting Nurse Association, Opinion No. 19-01WC 5(2001). (citations omitted) Such a departure means that the claimant moves away from the business objective and toward a personal one.*

*Defendant persuasively argues that claimant substantially deviated from work activities when she drove to the ski area from the conference site to pick up her children. Claimant's deviation was 45 minutes one way, a substantial deviation from the area of work. Driving to a ski area increased the risk of injury, as did a trip 30 miles from the conference site. The deviation placed claimant in the line of a drunk driver who caused the injury.*

*The only work connectedness was that claimant was in Utah at the time. However, the trip was in the car she rented for the specific personal purpose of driving her children. Because her mission at the time of the accident was purely personal, it fell outside scope her employment, barring compensability under the Act.*

**ORDER:**

*Accordingly, FAHC's motion for summary judgment is hereby GRANTED.*

*Dated at Montpelier, Vermont this 14th day of January 2005.*

---

*Laura Kilmer Collins*  
*Commissioner*

*Appeal:*

*Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.*