Jeri Walbridge v. Hunger Mountain Co-op, Inc. (June 30, 2009)

STATE OF VERMONT
DEPARTMENT OF LABOR

Jeri Walbridge	Opinion No. 23-09WC
	By: Jane Dimotsis Hearing Officer
v.	
	J.P. Isabelle, Law Clerk
Hunger Mountain Co-Op, Inc.	For: Patricia Moulton Powden Commissioner
	State File No. Z-01496

RULING ON CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

ATTORNEYS:

Patrick L. Biggam, Esq., for Claimant
James O'Sullivan, Esq., for Defendant

ISSUE:

Claimant moves for summary judgment on the grounds that as a matter of law, her ankle injury must be deemed to have arisen out of and in the course of her employment for Defendant. Defendant opposes the motion, raising both factual and legal issues.

FINDINGS OF FACT:

Considering the evidence in the light most favorable to the non-moving party, *Toys, Inc. v. F.M. Burlington Co.*, 155 Vt. 44 (1990), I find the following facts:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Claimant began working for Defendant as a head cashier in 2004. She is currently a grocery stocker. On Friday, April 11, 2008 she called in sick. Because that day was the end of a pay period, in order to be paid for her sick day a payroll adjustment, or PTO form, had to be submitted to payroll and approved by a manager. Claimant previously had submitted PTO forms for other missed days of work, and therefore knew that the form was a prerequisite to being paid for the missed time. In this case, the form had to be submitted by Monday, April 14th, the payroll deadline for that week.

3. As to what signatures are required on the PTO form, the evidence is disputed. According to Claimant, generally both the employee and the supervisor must sign the form, though there are some occasions when the supervisor completes the form on the employee's behalf. According to both Defendant's grocery manager, Mr. Ormiston, and its human resources manager, Mr. Gribbin, Claimant's signature was not required in this instance, as a manager could have filled out the form for her. According to Defendant's payroll assistant, Ms. Edson, both signatures would have to be on the form in order for her to pass it through for payment.

4. The day after she called in sick, Saturday, April 12th, Claimant received a voice mail message from Mr. Ormiston. The content of the message is disputed. Claimant testified that Mr. Ormiston left a message stating that he would be at the store until 2:00 PM on Saturday and from noon until 8:00 PM on Sunday and that "he needed the PTO form fixed." In contrast, Mr. Ormiston testified that he called Claimant on Friday and left a message stating, "Give me a call so I can fill out some PTO for you." Mr. Ormiston further testified that he did not work from noon until 8:00 PM on Sunday, as Claimant recalled, but rather from 6:00 AM until 2:00 PM.

5. On Sunday, April 13th Claimant travelled to Defendant's store. She was not scheduled to work and acknowledged that she had not been asked specifically to come into the store on that day. She knew, however, that the payroll deadline was the next day and that PTO forms generally had to be submitted by that time in order for time off to be paid.

6. Claimant testified that when she arrived at the store she saw Mr. Ormiston in the bulk department and informed him that she was there to fix the PTO form, and that he thanked her for doing so. She then filled out the form and left it on Mr. Ormiston's desk.

7. After leaving the form on Mr. Ormiston's desk, Claimant then made a grocery purchase from the store. Upon exiting, she slipped on a rock in the parking lot and twisted her ankle. As a consequence of this injury Claimant was disabled from working for nine weeks.

CONCLUSIONS OF LAW:

1. Claimant moves for partial summary judgment on the grounds that because her trip to the store on Sunday was primarily to perform a work-related business function – signing the PTO form so that it could be submitted by the next day's payroll deadline – the injury she suffered while there must be deemed to have arisen in the course and scope of her employment and is therefore compensable. Defendant counters that because it was not necessary for Claimant to sign the PTO form, there was no business reason for her to be at the store and that therefore her injury did not occur in the course and scope of her employment. Defendant also questions whether the primary motive for Claimant's trip to the store on Sunday may have been personal – to shop for groceries – in which case, it argues, the incidental business purpose – signing the PTO form – is an insufficient basis for concluding that her injury was work-related.

2. Summary judgment is proper when "there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law, after giving the benefit of all reasonable doubts and inferences to the opposing party." *State v. Delaney*, 157 Vt. 247, 252 (1991). To prevail on a motion for summary judgment, the facts must be "clear, undisputed or unrefuted." *State v. Heritage Realty of Vermont*, 137 Vt. 425 (1979); *A.M. v. Laraway Youth and Family Services*, Opinion No. 43-08WC (October 30, 2008).

3. Viewing the evidence in the light most favorable to Defendant, as the non-moving party, questions of material fact exist that preclude a finding of summary judgment in Claimant's favor. Did she have to sign the PTO form before Monday or could a manager have signed it for her? Did she travel to the store on Sunday primarily to sign the form or primarily to do some personal grocery shopping? These are questions of fact, and the evidence is conflicting. Whether legally this claim falls under the "positional risk" analysis advocated by Claimant or the "dual purpose" doctrine suggested by Defendant, in either case summary judgment is inappropriate.

ORDER:

Claimant's Motion for Partial Summary Judgment is hereby **DENIED**.

DATED at Montpelier, Vermont this 30th day of June 2009.

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Patricia Moulton Powden
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.