STATE OF VERMONT
DEPARTMENT OF LABOR

Jeri Walbridge

v.

Hunger Mountain Co-op

Opinion No. 12-10WC

By: Phyllis Phillips, Esq.
Sal Spinosa, Esq.
Hearing Officers

For: Patricia Moulton Powden
Commissioner

State File No. Z-01496

OPINION AND ORDER

Hearing held in Montpelier on December 16, 2009
Record closed on January 19, 2010

APPEARANCES:

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

ISSUE PRESENTED:

Did Claimant's April 13, 2008 injury arise out of and in the course of her employment for Defendant?

EXHIBITS:

Joint Exhibit I: Payroll adjustment form, April 13, 2008

CLAIM:

Workers' compensation benefits causally related to Claimant's April 13, 2008 right ankle injury

FINDINGS OF FACT:

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. Judicial notice is taken of all relevant forms contained in the Department's file relating to this claim.

3. Claimant began working at Defendant's grocery store in August 2004, first as a head cashier and later as a grocery stocker. At the time of her injury her work hours were Monday through Friday, 6:00 AM to 2:00 PM.

4. On Friday April 11, 2008 Claimant was sick and unable to work. She called and informed Defendant that she would not be coming in.

5. Defendant uses a payroll adjustment, or "PTO form" to document an employee's paid time off for sick, personal or vacation leave. Before it can be processed, typically the form must be signed by the employee and initialed by his or her manager. On occasion, an employee can authorize a manager to complete the form on his or her behalf. In these instances the manager must call the employee and obtain the necessary verbal authorization to submit the form without the employee's signature.

6. Because Friday, April 11th was close to the end of a payroll cycle, both Claimant and her supervisor, Leo Ormiston, recognized that a PTO form would need to be submitted by early the next week in order for Claimant to be paid for the day in her next paycheck. Claimant testified that she understood the deadline for submitting a completed PTO form to be the following Monday, April 14th. In fact, Defendant's payroll assistant, Ms. Edson, testified that the deadline for submitting PTO forms was not until noon on Tuesday, April 15th. Mr. Ormiston testified to the same effect, and noted that it was common knowledge among employees that the deadline for submitting PTO forms was on the Tuesday of a pay week, not the Monday.

7. Mr. Ormiston testified that whenever an employee is out sick towards the end of a pay period, he typically calls to inquire whether they would like him to complete a PTO form on their behalf. To that end, at around noon on Friday, April 11th Mr. Ormiston left a voice mail message on Claimant's phone, asking her to give him a call so that he could complete a PTO form for her. Both Claimant and Mr. Ormiston acknowledged that he had made similar calls to her in the past.

8. Claimant did not hear Mr. Ormiston's voice mail message until mid-afternoon on Saturday, April 12th. By that time, she presumed Mr. Ormiston would have left for the day.

9. On Sunday, April 13th Claimant traveled from her home in Graniteville to Montpelier to visit her niece. On her way home, she decided to stop at Defendant's store, both to pick up a few grocery items and to "fix that PTO form for [Mr. Ormiston]." Claimant acknowledged that neither Mr. Ormiston nor anyone else had asked her to come in on Sunday to complete the form, but given that she already was in Montpelier she thought that it was an opportune time for her to do so.

10. Upon her arrival at the store, Claimant chatted briefly with a co-worker, then spied Mr. Ormiston and told him she was going to take care of the PTO form. She proceeded to his office, completed the PTO form and left it on his desk. After doing so, Claimant again spoke briefly to Mr. Ormiston, and then focused her attention on purchasing the four grocery items she needed. As she exited the store and walked through the parking lot to her car, she stepped on a rock, rolled her right ankle and fell to the ground. Other

customers assisted her to her feet and helped her to her car. By the time Claimant got home, her right ankle was swollen and painful.

11. Claimant worked her scheduled shift on Monday, April 14th. Mid-morning she inquired of Ms. Edson whether her PTO form had been submitted, as she was concerned that her paycheck for the week be appropriately calculated. Ms. Edson replied that she did not yet have the form, but reassured Claimant that she would get it in time. In fact, as Mr. Ormiston typically did not work on Mondays, he did not approve and submit the form until Tuesday morning, April 15th. As noted above, however, this was still timely enough to allow Ms. Edson to process it for the pending pay period.

12. Claimant worked her scheduled hours for the remainder of the week, but her ankle became increasingly painful. By Friday, April 18th she could no longer stand on it and had to leave work early in order to seek treatment.

13. Claimant was disabled from working for approximately nine weeks as a result of her ankle injury. She also incurred unspecified medical expenses. Defendant issued a timely denial of her claim for workers' compensation benefits on the grounds that her injury did not arise out of or in the course of her employment.

CONCLUSIONS OF LAW:

1. To establish a compensable claim under Vermont's workers' compensation law, a claimant must show both that the accident giving rise to his or her injury occurred "in the course of the employment" and that it "arose out of the employment." *Miller v. IBM*, 161 Vt. 213, 214 (1993); 21 V.S.A. §618.

2. An injury occurs in the course of employment "when it occurs within the period of time when the employee was on duty at a place where the employee was reasonably expected to be while fulfilling the duties of [the] employment contract." *Miller, supra* at 215, *quoting Marsigli Estate v. Granite City Auto Sales, Inc.*, 124 Vt. 95, 98 (1964).

3. An injury arises out of the employment "if it would not have occurred *but for* the fact that the conditions and obligations of the employment placed claimant in the position where [claimant] was injured." *Shaw v. Dutton Berry Farm*, 160 Vt. 594, 599 (1993), *quoting* 1 Larson, *Workers' Compensation Law* §6.50 (1990) (emphasis in original). This so-called "positional risk" analysis lays responsibility on an employer when an employee's injury would not have occurred "but for" the employment and the worker's position at work. *Id.*

4. Putting these two prongs of the compensability test together, the "in the course of" requirement establishes a *time and place* connection between the injury and the employment, while the "arising out of" requirement establishes a *causal* connection between the injury and the employment. *See Spinks v. Ecowater Systems*, WC 04-217 (Minn. Work.Comp.Ct.App., January 21, 2005). Both connections are necessary for a claim to be compensable. *Carlson v. Experian Information Solutions*, Opinion No. 23-08WC (June 5, 2008).

Claimant's Employment "Duties"

5. Defendant asserts first that Claimant's injury did not occur "in the course of" her employment because she was under no work-related duty to sign and submit the PTO form on Sunday, April 13th. Claimant could have authorized Mr. Ormiston to complete the form on her behalf. Alternatively, she could have waited until Monday, or even Tuesday, to complete the form and still it would have been submitted in time to be included in that week's payroll. With those alternatives in mind, Defendant argues that by presenting herself at the store on Sunday in order to sign the PTO form Claimant was not in any way "fulfilling the duties of her employment contract." *Marsigli Estate, supra*.

6. The concept of "duty" cannot be so strictly construed, however. *Miller, supra* at 215. A broader view of what is encompassed by an injured worker's employment best furthers the remedial purpose of the workers' compensation act. *Id.* at 216, *citing Shaw, supra*.

7. A key component of what constitutes an employee's work-related "duty" is whether the activity benefits the employer. If it does, then it fits within the parameters of the term, even if the employer did not specifically direct the employee to undertake the activity. *Kenney v. Rockingham School District*, 123 Vt. 344 (1963).

8. In *Kenney*, the claimant, a home economics teacher, enrolled as a student in an evening sewing class taught at her school. Her motivation for doing so was both to improve her teaching ability and to become better acquainted with the mothers of some of her students, who also had enrolled in the class. While exiting the building after class one night, she fell on some icy steps and injured herself. The court held that the claimant had been engaged in an activity that, though voluntary, had been undertaken in good faith in order to advance her employer's interest. As such, it fit within the scope of her work-related "duties." *Kenney, supra* at 347, *citing Rothfarb v. Camp Awanee, Inc.*, 116 Vt. 172, 178 (1950) *(overruled on other grounds, Shaw, supra).*

9. Another aspect of an employee's work-related "duty" focuses on the essential elements of the employment contract. The ability to tender and receive the agreed upon compensation is an essential component of the relationship between employer and employee. When an employee is injured while engaged in the process of collecting his or her paycheck, therefore, such injuries are deemed compensable. *See, e.g., Dunlap v. Clinton Valley Center*, 425 N.W.2d 553 (Mich.App. 1988); *Oliver v. Faulkner Wood Co.*, 531 So.2d 675, 677 (Ala.Civ.App. 1988) (citing 1A A. Larson, *The Law of Workmen's Compensation* §26.30). This is true even if the paycheck at issue is the final one, tendered and received some days after the injured worker's employment terminated. 2 *Larson's Workers' Compensation Law* §26.03[1].

10. Here, Claimant's work-related duties included assisting Defendant in ensuring that the compensation due her was appropriately documented, accurately calculated and paid on time. Claimant was fulfilling that aspect of her employment contract when she appeared at the store on Sunday, April 13th to sign the PTO form. True, Claimant might have chosen another time to complete the form, for example when she came in for her scheduled shift on Monday, or even another method, such as by authorizing Mr. Ormiston to sign it for her. However, neither of these considerations negates the fact that by doing what she did when and where she did it she was fulfilling a work-related duty, one that she undertook in good faith to benefit both her and her employer mutually. *Kenney, supra* at 348; (1963); *Livering v. Richardson's Restaurant*, 374 Md. 566 (2003) (finding compensable an on-premises injury that occurred while employee was checking her work schedule on her day off).

11. The facts in *Livering* are instructive. The claimant in that case, a restaurant employee, visited the restaurant while in the course of running personal errands on her day off so that she could check her work schedule. After doing so, she socialized briefly with her co-employees, then slipped and fell as she left the premises to continue her other errands. The court found her injury to be compensable. Arriving to work on time, the court stated, was a necessary component of the claimant's work duties, and therefore checking the work schedule, which the employer often changed unexpectedly, benefitted both parties mutually.

12. In reaching its conclusion the *Livering* court remarked that the fact situation it was considering created an even stronger work connection than the one found in cases involving terminated employees injured while collecting their final paychecks. *See supra*, Conclusion of Law No. 9. Those cases involved an employer-employee relationship that was about to end, whereas the *Livering* case involved one that was ongoing.

13. Here too, Claimant's activities arose in the context of an ongoing employment relationship, and therefore present a convincing case for consideration as a component of her work-related "duties." Given the expanded nature of the concept of how an employee "fulfills the duties of the employment contract," *Miller, supra*, I conclude that Claimant was so engaged at the time of her injury.

The "Dual Purpose" Doctrine

14. Defendant also argues that Claimant's injury did not occur "in the course of" her employment because the primary reason for her trip to the store on Sunday, April 13th was to pick up some groceries, and only incidentally to complete the PTO form. Analyzing this argument requires consideration of the "dual purpose" doctrine.

15. The dual purpose doctrine recognizes that at times an employee may be injured while engaged in activities that serve both personal and business interests. For such an injury to be compensable, the business-related purpose need not be the sole motivation, but it must at least be a concurrent one. *Brailsford v. Time Capsules*, Opinion No. 12-00WC (May 17, 2000), *citing Marks Dependents v. Gray*, 251 N.Y. 90 (1920). Thus, to establish liability, there must be sufficient evidence from which to infer that even if Claimant had abandoned her intention to grocery shop she still would have made the trip to Defendant's store so that she could complete the PTO form. *See* 1 *Larson's Workers' Compensation Law* §16.02 and cases cited therein.

16. Here, I accept as credible Claimant's testimony that she decided to stop at Defendant's store primarily to complete the PTO form, and only tangentially to grocery shop. This testimony is buttressed by the fact that Claimant made a point of checking with Defendant's payroll assistant early Monday morning to see if Mr. Ormiston had submitted the form. It shows that she ascribed special importance to ensuring that the form was appropriately completed and submitted on time. I infer from this evidence that Claimant most likely would have traveled to the store on Sunday even if she had had no need for the grocery items she purchased while she was there.

17. I conclude, therefore, that Claimant was acting "in the course of" her employment for Defendant at the time of her injury. Traveling to the store on Sunday to complete the PTO form was an activity that she undertook primarily to advance her employer's interests. Thus it fell within the context of her employment duties, even though the trip may have served her personal interests as well.

"On Premises" Injury

18. As a final argument, Defendant asserts that Claimant's injury is not compensable because it occurred after she had left Defendant's store and was walking to her car in the parking lot. The Vermont Supreme Court specifically addressed this issue in *Miller*, holding that an injury that occurs on the employer's premises while the employee is going to or coming from work is compensable. *Id.* at 216. Having determined that completing the PTO form constituted a work activity, Defendant's liability for any injuries related thereto continued for so long as Claimant was on its premises. Defendant's argument to the contrary is completely unavailing.

The "Arising Out of" Component

19. Having met the "in the course of" component of compensability, I conclude that Claimant has met the "arising out of" component as well. As the Supreme Court noted in *Shaw, supra* at 598, ordinarily if an injury occurs in the course of employment, it also arises out of it, "unless the circumstances are so attenuated from the conditions of employment that the cause of the injury cannot reasonably be related to the employment."

20. The circumstances are not so attenuated here. As discussed above, *see* Conclusion of Law No. 9, a key component of any employee's employment revolves around the process by which he or she is paid. That process necessarily qualifies as one of the "nature, conditions, obligations or incidents of the employment." *Kenney, supra* at 349. But for Claimant's employment for Defendant, she would not have been in a position to complete the PTO form, and thus to be injured. *Shaw, supra.*

21. I conclude, therefore, that Claimant has established both that her injury occurred "in the course of" her employment and that it "arose out of" her employment as well. Her April 11, 2008 injury is compensable.

22. As Claimant has prevailed, she is entitled to an award of costs and attorney fees pursuant to 21 V.S.A. §678. In accordance with §678(e), Claimant shall have 30 days from the date of this decision within which to submit her claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. All workers' compensation benefits to which Claimant proves her entitlement as causally related to her compensable right ankle injury, with interest as provided in 21 V.S.A. §664; and

2. Costs and attorney fees in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 24th day of March 2010.

_____
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.