STATE OF VERMONT
DEPARTMENT OF LABOR

Sarah Freeman

v.

Pathways of the River Valley

Opinion No. 09-17WC

By: Phyllis Phillips, Esq.
Administrative Law Judge

For: Lindsay H. Kurrle
Commissioner

State File No. HH-00891

RULING ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

APPEARANCES:

Robert Mabey, Esq., for Claimant
David Berman, Esq., for Defendant

ISSUES PRESENTED:

Did Claimant's May 21, 2016 injury arise out of and in the course of her employment for Defendant?

EXHIBITS:

Claimant's Exhibit 1:	Deposition of Claimant, October 25, 2016
Claimant's Exhibit 2:	Deposition of Kimberly Henning, August 26, 2016
Claimant's Exhibit 3:	Deposition of Jean Warner, August 26, 2016
Claimant's Exhibit 4:	Defendant's Mileage Policy and Procedure
Defendant's Exhibit A:	Excerpts from Kimberly Henning deposition, August 26, 2016
Defendant's Exhibit B:	Excerpts from Claimant deposition, October 25, 2016
Defendant's Exhibit C:	Excerpts from Jean Warner deposition, August 26, 2016
Defendant's Exhibit D:	Earnings statements and time records, 2/14/2016-5/21/2016
Defendant's Exhibit E:	Mileage reimbursement vouchers, 2/25/16-5/5/2016

FINDINGS OF FACT:

Considering the evidence in the light most favorable to Claimant as the non-moving party, *State v. Delaney*, 157 Vt. 247, 252 (1991), I find the following facts:

1. Claimant works for Defendant as a ñsupport brokerò ï a case manager for individuals with developmental disabilities. Working out of Defendantôs Claremont, New Hampshire office, she assists clients and their family members to identify service needs, write behavioral plans and troubleshoot staffing issues. In her support broker role, she does not provide any direct services herself, such as bathing, dressing or feeding clients. These functions are performed by ñdirect support providers (DSPs),ò some of whom Claimant herself supervises. *Deposition of Claimant ("Claimant deposition")* at 7, 9, *Claimant's Exhibit 1*; *Deposition of Jean Warner ("Warner deposition")* at 7, 26, *Claimant's Exhibit 3*; *Deposition of Kimberly Henning ("Henning deposition")* at 18, *Claimant's Exhibit 2*.

2. Some of Defendantôs clients reside with their families; others live in residential facilities staffed either by Defendantôs DSPs or by contracted home care providers. *Warner deposition* at 11, *Claimant's Exhibit 3*; *Henning deposition* at 15-16, *Claimant's Exhibit 2*. Defendantôs organizational mission is to give clients and their family members as much freedom as possible to make decisions regarding their care. Support brokers typically work with clients who are more independent, by providing ñparticipant directed and managed services.ò Even residential facility clients who are unable to participate in directing their own services are afforded choices where appropriate, however. *Henning deposition* at 39-40, *Claimant's Exhibit 2*.

3. In her support broker job, Claimant typically works eight hours per day, Monday through Friday, at an hourly rate of $15.45. Her supervisor is Jean Warner, the Director for Participant Managed Services. *Claimant deposition* at 8-9, *Claimant's Exhibit 1*; *Henning deposition* at 24, *Claimant's Exhibit 2*; *Warner deposition* at 6, *Claimant's Exhibit 3*.

4. Claimantôs typical commute from her Springfield, Vermont home to her Claremont office is approximately 15-20 miles. If her support broker responsibilities require her to travel at the beginning or end of her day, to meet with a clientôs family before or after work, for example, Defendant pays mileage over and above her normal commute. Business-related travel to and from the office during the workday is also reimbursable. To receive reimbursement, Claimant submits a mileage reimbursement voucher. *Claimant deposition* at 10-13, *Claimant's Exhibit 1*. Mileage is reimbursable at the rate of $0.40 per mile. *Defendant's Mileage Policy and Procedure, Claimant's Exhibit 4*.

5. In February 2016 Claimant learned of a severe staff shortage at Defendantôs residential facility in Lyme, New Hampshire. Twelve clients live there, none of whom receive patient directed managed care services of the type Claimant typically brokers. The facility requires a full-time direct care staff of twenty, but at the time only nine DSPs worked there. Defendant filled much of the staffing gap through a temporary agency. *Henning deposition* at 16, 30*, Claimant's Exhibit 2*.

6. Claimant approached Ms. Warner and offered to help, by working every other Saturday as a DSP at the Lyme facility. *Claimant deposition* at 13-14, *Claimant's Exhibit 1*.

7. Initially, Ms. Warner declined the offer, due to her concern that the overtime hours Claimant would accumulate for her Saturday work made the proposal untenable. However, after discussing the matter with Defendantôs Chief Operating Officer, she agreed to the arrangement. *Warner deposition* at 12-14, *Claimant's Exhibit 3*.

8. In addition to providing direct care to the Lyme facility residents, Claimant and Ms. Warner agreed that she was to perform a supervisory function as well, by ñkeep[ing] an eye on how things are up thereò and reporting to the facilityôs assistant director ñif there was anything I noticed.ò *Claimant deposition* at 15. This ñsupervisory oversightò was informal, in the sense that Claimant was never instructed to supervise specific DSPs, nor were any DSPs advised that she was supervising them. *Id.* at 29, 34-35; *Henning deposition* at 20, *Claimant's Exhibit 2*. But as with any supervisory employee in the agency, Ms. Warner expected that she would act as a role model for the DSPs, provide guidance where she could and report any concerns she might observe to one of the more regular supervisors at the facility. *Warner deposition* at 20, *Claimant's Exhibit 3*.

9. For her work at the Lyme facility, Defendant paid Claimant at her regular, support broker rate, $15.45 per hour. *Henning deposition* at 24, *Claimant's Exhibit 2*. However, because her Saturday hours always constituted overtime, her actual pay rate was at time-and-a-half her regular wage, or $23.17 per hour. *Claimant deposition* at 15, 17, *Claimant's Exhibit 1*. This was significantly higher than what Defendant typically pays its DSPs ï $10.00 to $16.66 per hour, depending on experience. *Henning deposition* at 22, *Claimant's Exhibit 2*. It was also much higher than what Claimant would have received had she been paid at the lower, DSP pay rate with an additional travel stipend to cover her commute mileage. *Claimant's deposition* at 38-39, *Claimant's Exhibit 1*.

10. Neither Claimant nor Defendant specified a fixed term for her work at the Lyme facility. Defendantôs human resources director, Kimberly Henning, considered the position to be ongoing rather than temporary, with no set end date. *Henning deposition* at 25, *Claimant's Exhibit 2*. Claimant acknowledged that the term was indefinite, and anticipated that she would continue in the position either until the facility was better staffed or until she decided she did not want to do it anymore, which she expected would occur during the summer. *Claimant's deposition* at 27, 34, *Claimant's Exhibit 1*.

11. Claimant began working at the Lyme location on Saturday, February 27, 2016. *Claimant deposition* at 20, *Claimant's Exhibit 1*. Shortly thereafter, she inquired of Ms. Warner whether she was entitled to mileage reimbursement for her travel to and from the facility, which was more than twice the distance as her weekday commute to and from Claremont. *Id.* at 16, 30; *Warner deposition* at 19-20, *Claimant's Exhibit 3*. Ms. Warner informed her that she was not. Claimant understood that this was because at time-and-a-half her overtime wages were twice what a typical DSP earned for the same kind of work, and in that sense, they included any compensation she otherwise would have been due for mileage. *Claimant deposition* at 15, 18-19, 31.

12. To the extent that Claimant was expected to assume a supervisory role while working at the Lyme facility, for her not to be reimbursed for her commute mileage was consistent with Defendantôs informal policy at that location. DSPs received mileage reimbursement for their commute as an enticement for them to work there, but this applied only to non-supervisory employees, not supervisory ones. *Henning deposition* at 27-28, 35, *Claimant's Exhibit 2*. On this issue, Ms. Henning testified as follows, *id.* at 43-44:

> Q: Okay. And so the . . . policy is based that because DSPs donôt make very much money that theyôre ï and they have to travel the additional distance to Lyme, that they were compensated for the mileage; correct? Yes?
> A: Yes.
> Q: Okay. And [Claimant] wasnôt paid the additional mileage because she already was being paid at a higher rate?
> A: And because she was in a supervisory role. That is the bottom line that I have now told you about three or four times. Because anyone in a supervisory role was not paid mileage to go work in [Lyme].

13. As of February 27, 2016, her first Saturday at the Lyme facility, Claimantôs regular work schedule was forty hours Monday through Friday in the Claremont office, and every other Saturday in Lyme. *Claimant deposition* at 21, *Claimant's Exhibit 1*. In all, she worked six Saturdays ï February 27th, March 12th and 26th, April 9th and 23rd, and May 7th. *Id.* at 20.

14. Claimant was not ñon the clockò and was not paid for her commute time either for her travel to and from Defendantôs Claremont office or for her travel to and from the Lyme facility. *Claimant deposition* at 17, *Claimant's Exhibit 1*. Nor did she complete any mileage reimbursement vouchers for her commute to and from the Lyme location. *Claimant deposition* at 19, *Claimant's Exhibit 1*; *Defendant's Exhibit E*.

15. While commuting to work on her regular, direct route from her home to the Lyme facility on Saturday morning, May 21, 2016, Claimant was involved in a single-car motor vehicle accident. She was not wearing a seat belt, and does not recall any of the details, but reportedly was thrown from the vehicle and found in front of the car. She suffered severe injuries, including brain trauma, a fractured skull, cranial nerve damage, a fractured sternum and left leg fractures. She was hospitalized for a week, and then transferred to an in-patient rehabilitation facility for two weeks thereafter. She continues to treat for the various sequelae of her injuries. *Claimant deposition* at 21-26, *Claimant's Exhibit 1*.

CONCLUSIONS OF LAW:

1. To prevail on a motion for summary judgment, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to a judgment in its favor as a matter of law. *Samplid Enterprises, Inc v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 252 (1991); *Toys, Inc. v. F.M. Burlington Co*., 155 Vt. 44 (1990). Summary judgment is appropriate only when the facts in question are clear, undisputed or unrefuted. *State v. Realty of Vermont*, 137 Vt. 425 (1979).

Determining Compensability: "Arising Out of" and "In the Course of" Employment

2. The starting point for any workersô compensation claim is whether the injury arose out of and in the course of employment. 21 V.S.A. §618; *McNally v. Department of PATH*, 2010 VT 99, ¶10. This is a two-pronged test, requiring a sufficient showing of both (1) a causal connection (the ñarising out ofò component); and (2) a time, place and activity link (the ñin the course ofò component) between the claimantôs work and the accident giving rise to his or her injuries. *Cyr v. McDermott's, Inc.*, 2010 VT 19; *Miller v. IBM*, 161 Vt. 213 (1993).

3. The focus of the partiesô dispute here is on the second component. As the Supreme Court in *Cyr* explained, the question whether an injury occurred ñin the course ofò employment ñgenerally ótests work-connection as to time, place and activity; that is, it demands that the injury be shown to have arisen within the time and space boundaries of the employment, and in the course of an activity whose purpose is related to the employment.ôò *Cyr, supra* at ¶13, citing 1 A. Larson & L. Larson, *Larson's Workers' Compensation Law* §12.01 at p.12-1 (2009); *Miller, supra* at 215; *Marsigli Estate v. Granite City Auto Sales, Inc.*, 124 Vt. 95 (1964).

The "Going and Coming" Rule Generally

4. An employee is not within the course of employment when he or she is injured while traveling to and from work, unless the injury occurs on the employerôs premises. *Miller, supra* at 216. Known as the ñgoing and comingò or ñpremisesò rule, the doctrine ñpromotes the broad policy of remediation because it covers workers for part of the necessary job-related activity of commutingò at the same time that it ñdelineates the employerôs liability . . . as coextensive with the employerôs premises.ò By thus limiting the employerôs workersô compensation liability to areas within its control, the rule ñincorporates a fair compromise in allocating the cost of worker injuries.ò *Id.*

The Traveling Employee Exception to the Going and Coming Rule

5. There is an exception to the going and coming rule in cases involving traveling employees ï those who either have no fixed place of employment or who are engaged in a special errand or business trip at the time of their injuries. *Moreton v. State of Vermont, Department of Children and Families*, Opinion No. 17-14WC (December 24, 2014), citing 1 Lex K. Larson, *Larson's Workers' Compensation* §14.01 *et seq.* (Matthew Bender Rev. Ed.). Professor Larson states the exception as follows, *id.* at p.14-1:

> The rule excluding off-premises injuries during the journey to and from work does not apply if the making of that journey, or the special degree of inconvenience or urgency under which it is made, whether or not separately compensated for, is in itself a substantial part of the service for which the worker is employed.

6. For workers with a fixed place of employment, delineating where their daily commute begins and ends is usually straightforward. Such employees choose the route and means of their journey, and commence their work-related duties only after arriving at a specific, identifiable, employer-controlled workplace ï an office, a store or a manufacturing facility, for example. Traveling to and from work, while obviously necessary, does not itself serve a function of the employerôs business, and for that reason an injury sustained during the commute does not arise in the course of employment. *Avery v. Manitowoc Nevada Group Toledo Ship & Repair, et al.,* 2003-Ohio-3519 (Ohio Ct.App. 2003) at ¶5, citing *Ruckman v. Cubby Drilling, Inc.*, 689 N.E.2d 917 (Ohio 1998).

7. Workers who have no designated employment situs are also relatively easy to identify. A salesperson, products representative or visiting nurse whose workday begins and ends at home rather than at a central office is continuously furthering the employerôs business while traveling to and from customers or clients. For this worker, travel is a substantial part of the service for which he or she is employed; assuming no personal deviations, an injury that occurs while going to or coming from home is typically deemed to arise in the course of employment. *See, e.g., Estate of Rollins v. Orleans Essex Visiting Nurse Association*, Opinion No. 19-01WC (June 5, 2001) (injury occurring while traveling home after visiting last client of the workday deemed to have arisen in the course of employment); *but see Hunt v. Tender Loving Care Home Care Agency, Inc.*, 569 S.E.2d 675 (N.C. Ct.App. 2002) (nursing aide who cared for only one patient during the entirety of her two-year employment for employer had fixed hours and work location and therefore did not meet traveling employee exception to going and coming rule).

8. There is a third class of employees ï those with a semi-fixed or temporary work situs ï for whom identifying where the workday begins and ends is more complicated. For example, a construction laborer typically works at a ñfixedò location in the sense that it is designated and identifiable, but only until the job is completed, at which time a new, equally ñfixedò worksite is assigned. Unlike a ñfixedò employee, the nature of the work requires that the laborer travel to the customer, not the other way around, but the commute itself is not so much a part of the service as to equate with a ñtraveling employeeò situation. Not surprisingly, adjudicating such cases yields differing results based on varying legal analyses. *Compare Brown v. Vermont Mechanical*, Opinion No. 09-02WC (February 25, 2002) (construction worker injured while traveling to designated jobsite was not subject to employerôs control over journey and did not face any increased risk beyond that of a normal commute on a public highway, therefore injury did not occur in the course of employment) *with Fletcher v. Northwest Mechanical Contractors, Inc.*, 599 N.E.2d 822, 827 (Ohio Ct.App. 1991) (nature of sprinkler installation occupation required employee to travel to customer ñas necessary and required part of his employment;ò therefore, injury suffered while doing so occurred in the course of employment).

9. The undisputed facts here establish that Claimant was a fixed situs employee, albeit one with two separately designated workplaces. Apart from required business-related travel to and from offsite meetings, her support broker duties commenced each weekday upon her arrival at Defendantôs Claremont premises and ended each evening when she left for home. Similarly, her DSP duties, which consisted of bathing, dressing, feeding and otherwise caring for the residents at Defendantôs Lyme facility, commenced every other Saturday morning upon her arrival there and ended that evening when she departed. Her commute did not constitute a ñsubstantial part of the servicesò for which she was employed at either location.

10. That Claimant was performing a ñvital roleò by helping to address the severe staffing shortage at the Lyme facility, *Claimant's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment* at 5, such that Defendant reaped a ñsubstantial benefitò from her willingness to travel there, *id.* at 6, does not change this result in any respect. To be sure, Defendant benefited from Claimantôs presence at the Lyme facility, as it did from her presence at the Claremont office, and as it would from any employeeôs attendance at either location. Were this the standard for determining whether a workerôs commute to and from work merits an exception to the going and coming rule, then the rule itself would be completely eviscerated. *Williams v. Workers' Compensation Appeal Board (Matco Electric Co., Inc.)*, 721 A.2d 1140, 1146 (Pa.Cmwlth. 1998). Here, the services Claimant performed began and ended not in her car, but at Defendantôs premises.

Payment for Travel Time or Expenses as Justifying Traveling Employee Exception

11. Claimant asserts that questions of fact exist as to whether Defendantôs agreement to pay a higher hourly rate for her work at the Lyme facility than what other DSPs earned amounted to indirect compensation for her commute there. It is true that an employer can by contract make even a fixed situs employeeôs regular journey to and from work a ñsubstantial part of the serviceò for which he or she is employed, *Fletcher, supra*. An employer who provides transportation, either directly, as by requiring the employee to drive a company car, or indirectly, by paying for the employeeôs travel time and expenses, may thereby signal its intent to bring what would otherwise be a normal commute to and from work within the course of employment. *Larson's Workers' Compensation, supra* at §14.07[1].

12. In considering this aspect of the traveling employee exception, an important distinction exists between a ñdeliberate and substantialò payment for the employeeôs actual travel expenses, *id.*, and payments that represent a more generalized ñinducementò for the workerôs agreement to accept an unattractive job assignment, *id.* at §14.07[2]-[3]; *see, e.g., Mitchell v. Pleasant Hill General Hospital, Inc.*, 491 So.2d 183 (La. Ct.App. 1986). An employer who offers higher wages or other incentives as a means of encouraging a worker to take on an unappealing commute does not thereby assume responsibility for the journey *unless* the payments are tied directly to the time and expense of travel. *See, e.g., Lynn v. Tatitlek Support Services*, 214 Cal.Rptr.3d 449 (Cal. Ct.App. 2017) (employee who chose to drive his personal vehicle to and from remote jobsite rather than availing himself of free employer-provided bus service was not within course of employment during commute because he was not paid for actual travel time or expenses); *Leisure Line v. Workers' Compensation Appeal Board (Walker)*, 986 A.2d 901 (Pa.Cmwlth. 2009) (same result as to bus driver who received collectively bargained higher daily rate for driving unattractive route); *Avery, supra* (same result as to collectively bargained higher wage for night shift foreman); *Byrd v. Stackhouse Sheet Metal Works*, 451 S.E.2d 405 (S.C.App. 1994) (monthly ñgas moneyò payment did not fluctuate with increases or decreases in monthly mileage or travel time, therefore represented additional compensation to attract skilled workers, not payment for transportation expenses); *Mitchell, supra* (same).

13. Having made a conscious choice to do so, an employee who accepts a job that is unattractive, whether because of the long commute involved or for other reasons, stands in the same position as any other fixed situs employee. *Avery, supra* at ¶7. It does not matter that the job pays more because it is undesirable; the benefit to the employer derives from the workerôs attendance, not from the journey there and back.

14. As noted above, Finding of Fact Nos. 8, 11-12 *supra*, the parties dispute whether Claimantôs hourly rate at the Lyme facility was intended to compensate her for her longer commute or for her supervisory responsibilities.[1] They agree that she was not paid for the actual time and expense of her travel, however, Finding of Fact No. 14 *supra*. This is the legally significant fact, and on that there is no genuine issue.

15. Even considered in the light most favorable to Claimant as the non-moving party, the undisputed evidence thus fails to establish that her commute to and from the Lyme facility constituted a ñsubstantial part of the servicesò for which she was employed there. Certainly the nature of her work ï bathing, feeding, dressing and providing direct care to the residents ï did not require travel. Nor did Defendant in any way control her journey. And while Claimant may have perceived that her higher wages included payment for her travel, they were not based on actual time and expense, and thus do not evidence a contract to that effect.

16. I conclude as a matter of law that Claimant does not meet the traveling employee exception to the going and coming rule.

The "Special Errand" Exception

17. Claimant argues alternatively that her work at the Lyme facility should be characterized as a special errand or business trip, one that required her presence at a location separate and distinct from her regular jobsite. A ñspecial errandò is defined as one ñwhose circumstances involve such a degree of inconvenience, hazard or urgency as to render it sufficiently substantial to be viewed as an integral part of the service [for which the worker is employed] itself.ò *Larson's Workers' Compensation, supra* at §14.05[1], p.14-5. An injury suffered while undertaking such a journey thereby becomes compensable.

18. Several variables dictate whether a workerôs ñerrandò is so ñspecialò as to bring the commute that begins or ends the trip within the exception to the going and coming rule. Professor Larson has identified the following factors:

- The ñrelative regularity or unusualnessò of the journey, whether every day, at frequent intervals or only rarely, *id.* at §14.05[3], p.14-10;

- The relative ñonerousnessò of the journey (considering not only its length but also the time of day and conditions of travel), compared to the service to be performed at its end, *id.* at p.14-11; *see Drake v. Industrial Commission of Utah*, 939 P.2d 177, 184 (Utah 1997); and

[1] Arguably, it was neither. The primary reason for Claimantôs increased wages at the Lyme facility was because her Saturday hours put her over forty for the week, thus triggering time-and-a-half wages. Her base rate of $15.45 per hour was within the range of what Defendant paid its other DSPs, Finding of Fact No. 9 *supra*.

- The suddenness of the assignment and the urgency with which the journey is undertaken, whether necessitated by some time-sensitive emergency or of a less critical nature, *Larson's Workers' Compensation, supra* at §14.05[3], p.14-11 and §14.05[5], p.14-13.

19. In his treatise, *id.* at §14.05[1], p.14-6, Professor Larson discusses an early example of a special errand case, *Kyle v. Greene High School*, 226 N.W. 71 (Iowa 1929). There, the employer requested that the claimant, a school janitor, return to work outside of his regular hours so that he could turn on the gymnasium lights for an evening event. The janitor was fatally injured while walking from his home back to the school to do so. Noting the emergency nature of the request, which occurred after the janitor had completed his services for the day, the court concluded that he had ñstarted in the performance of a special service or errand . . . in the interest of his employer.ò *Id.* at 73. His commute back to work was no longer personal, but rather was incidental to his employment and therefore compensable.

20. As the *Kyle* case demonstrates, the rationale underlying the special errand exception to the going and coming rule is that when an employer sends an employee on a business-related mission that is outside his or her ñnormal job responsibilities,ò whether by virtue of its timing, location or other circumstances, the ñtrouble and time of making the journeyò is itself enough to bring it within the course of employment. *Masonry v. Murphy*, 183 P.3d 126, 131-132 (Nev. 2008) (internal citations omitted).

21. From the undisputed facts here, I conclude that Claimantôs work at the Lyme facility does not meet the special errand test. It was a regularly scheduled assignment with no set end date, not an isolated or haphazardly assigned obligation, *see Mayor & City Council of Baltimore v. Jakelski*, 410 A.2d 1116, 1119 (Md. Ct.App. 1980) (injury sustained by police officer while commuting from home to traffic court not compensable where monthly court appearance to support citations he had issued was a ñregularly repetitiveò part of his duties). The journey to and from, though longer than her commute to and from Claremont, was not unduly onerous in terms of either time, distance or other circumstances, *cf. Colvin v. Giguere*, 330 P.3d 83 (Utah 2014) (timing, distance and pace of trip all contributed to increased hazard, thus rendering journey unduly onerous). And although Defendantôs general need for staffing at the facility may have been urgent, the specific commute Claimant undertook on the morning she was injured was not in response to any emergency or need for unusual haste, *cf. Mason v. New York Abstract Co.*, 200 N.Y.S.2d 677 (1960) (memorandum decision) (worker chose alternate mode of transportation so that he could complete ñrushò job pursuant to supervisorôs instructions). Rather, the purpose of her journey on that day was simply so that she could attend to the regular job duties she had assumed when she agreed to work at the Lyme facility. Her commute thus occupies the same position as that of any other employee traveling from home to a fixed situs workplace. *Brown, supra* at Discussion ¶14; *Leisure Line, supra* at 907 (employerôs interest in having its employees come to work is a ñuniversalò circumstance, not a special one).

Summary

22. Underlying both the going and coming rule and its exceptions is the need to fairly balance the interests of employer and employee. By covering only that portion of an employeeôs regular commute that occurs on the employerôs premises, the general rule limits workersô compensation liability to areas within the latterôs control. *Miller, supra* at 216. Using the same rationale, the traveling employee exceptions extend coverage only to those commutes over which the employer has exercised additional control in some way, whether by making the travel a ñsubstantial part of the serviceò for which the worker is employed, or by imposing special requirements ï added urgency or inconvenience, for example ï that increase the risk beyond that of a normal commute. *Brown, supra.*

23. Even considered in the light most favorable to Claimant, the undisputed facts here do not establish any basis for extending workersô compensation coverage to her travel to and from Defendantôs Lyme facility. For that reason, I conclude as a matter of law that the injuries she sustained while commuting there on May 21, 2016 did not occur in the course of her employment and are not compensable.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendantôs Motion for Summary Judgment is hereby **GRANTED**. Claimantôs claim for workersô compensation benefits causally related to her May 21, 2016 accident is hereby **DENIED**.

DATED at Montpelier, Vermont this 31st day of May 2017.

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Lindsay H. Kurrle
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.