STATE OF VERMONT
DEPARTMENT OF LABOR

Roger Vanasse

v.

Springfield Printing Corporation

Opinion No. 05-21WC

By: Stephen W. Brown
Administrative Law Judge

For: Michael A. Harrington
Commissioner

State File No. MM-60664

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Matthew D. Anderson, Esq., for Claimant
Jennifer K. Moore, Esq., for Defendant

ISSUE PRESENTED:

Did Claimant's injury occur in the course of his employment with Defendant?

EXHIBITS:

Claimant's Statement of Undisputed Material Facts (CSUMF)
Claimant's Response to Defendant's Statement of Undisputed Material Facts (CRDSUMF)

Claimant's Exhibit 1:	Affidavit of Roger Vanasse
Claimant's Exhibit 2:	Job Description
Claimant's Exhibit 3:	Summary of Claimant's Compensation
Claimant's Exhibit 4:	Employee Handbook
Claimant's Exhibit 5:	February 25, 2020 Letter from Claimant's Counsel to Defendant

Defendant's Statement of Undisputed Material Facts (DSUMF)

Defendant's Exhibit A:	Claimant's Pretrial Disclosures
Defendant's Exhibit B:	Employee Handbook (excerpts)
Defendant's Exhibit C:	Printout from Google Maps
Defendant's Exhibit D:	Printout from Google Maps
Defendant's Exhibit E:	Printout from Google Maps

BACKGROUND:

The following facts are undisputed:

Claimant's Employment with Defendant

1. Defendant employs Claimant as a salaried account consultant. Before the onset of the Covid-19 pandemic, Claimant generally performed approximately 15 percent of his work at the office or plant, 35 percent at his home office, and 50 percent on the road visiting existing and prospective clients. (DSUMF 2). Defendant generally expects him to work from approximately 8:00 AM to 5:00 PM, but he sets his own schedule and is not required to check in with the office except for in-office meetings. (DSUMF 3).

2. For his work travel, Claimant drives his own vehicle, a 2015 Honda CR-V, which he purchased at Key Honda in Rutland, Vermont. He takes this vehicle to Key Honda for approximately 80 percent of its maintenance. (DSUMF 4).

3. Defendant provides Claimant with a travel stipend of $450.00 per month and a gas card. Although his gas card is only intended for business use, he is not required to track his miles. (DSUMF 5).

4. Some terms and conditions of Claimant's employment are outlined in an Employee Handbook dated January 2011, which provides in relevant part as it relates to vehicle maintenance:

> Reliable transportation to and from work is important. It is your responsibility to maintain your transportation so it doesn't interfere with your job. Lack of transportation is not an acceptable excuse for being late or not appearing on a scheduled work day.

(DSUMF 6; Defendant's Exhibit B, p. 5).

5. Prior to his injury, Claimant was aware that the Employee Handbook provided that it was his duty to maintain his personal vehicle so that it did not interfere with his job and that tardiness or absence due to transportation problems would not be excused. (DSUMF 7). However, Defendant does not control where Claimant obtains maintenance services for his vehicle. (*See* DSUMF 8).

Claimant's January 2020 Travel and Injury

6. On January 14, 2020, Claimant had a 10:00 AM business appointment at Global Reserve, LLC in Lebanon, New Hampshire, which is approximately 55.7 miles, or a roughly 90-minute drive,[1] from his home in Proctor, Vermont. His route to Global

[1] Defendant characterizes this drive as taking approximately one hour and 21 minutes, while Claimant characterizes it as taking approximately one and one-half hours depending on weather and traffic. I find this discrepancy immaterial for the purposes of these cross-motions.

Reserve from his home would have been via Vermont Route 3 South, US 4 Business East, Main Street North, US 4 East, and I-89 South. (*See* DSUMF 9).

7. Claimant went outside his home that morning at approximately 8:15 AM to start his car. He had planned to let it warm up for about 15 minutes, but when he got to his car in his driveway, he discovered that one of his snow tires was flat. He attempted to change the flat for his spare "doughnut" tire, but he was unfamiliar with the car's locking hubs and was unable to perform this task. (*See* DSUMF 10).

8. At some point before 8:30 AM, Claimant called Key Honda. A representative walked him through the process of swapping the tires and told Claimant that if he brought his car in, Key Honda could repair or replace the snow tire. (DSUMF 11).

9. By approximately 8:40 or 8:45, Claimant had installed the spare tire onto his car. He called his client and advised that he would be about half an hour late for his 10:00 AM appointment. (DSUMF 12).

10. Claimant then judged that it would be unsafe and potentially in violation of his employer's policies for him to drive to New Hampshire with a "skinny summer temporary doughnut tire" across the Green Mountains both ways. He understood that such tires were not intended to be driven at high speeds, for long distances, or in winter conditions, and that they had poor traction and stopping ability. (CSUMF 27). He was also uncertain as to whether he had installed the spare tire correctly on his vehicle. (CSUMF 28).

11. After getting the spare tire onto his car and calling the client, Claimant drove to Key Honda to get his snow tire repaired. (*Cf.* DSUMF 13, CRDSUMF 13). The first few legs of his drive were the same as if he had gone to the work appointment in New Hampshire: he went south on Vermont Route 3 and then east on US 4 Business. Instead of continuing on that highway to Main Street, however, he turned off early, taking a right on Merchants Row, and from there, he headed south and away from his originally-planned route, staying on Merchants Row as it becomes Strong Avenue and eventually becomes Main Street. Claimant continued heading south until he reached Key Honda, 1.7 miles off his original route (*See* DSUMF 14). He did not make any stops between his home and Key Honda. (*See* CSUF, ¶ 36).

12. After arriving at the dealership, Claimant pulled into a parking spot for the service center. He opened his car door and stepped out. When he stood on the ice, his feet slipped and he fell to the ground,[2] suffering personal injuries. (DSUMF 15).

13. Claimant has testified via affidavit that had he not had a sales appointment in New Hampshire that morning, he would have waited until the afternoon to have his snow tire fixed. By then, he contends, the ice that he fell on would have either melted or been made safe by the dealership. (*See* CSUMF 33).

[2] The parties dispute the direction of Claimant's fall. I need not resolve that issue for the purpose of these cross motions.

CONCLUSIONS OF LAW:

Summary Judgment

1. To prevail on a summary judgment motion, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). Summary judgment is appropriate only when the facts in question are clear, undisputed, or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425, 428 (1979). Where the parties have filed cross motions, each party is entitled to the benefit of all reasonable doubts and inferences when the opposing party's motion is being judged. *Toys, Inc. v. F.M. Burlington Co*., 155 Vt. 44, 48 (1990).

Compensability of Injuries Suffered While Traveling

2. Vermont law requires employers to pay workers' compensation benefits whenever a worker sustains a "personal injury by accident arising out of and in the course of employment by an employer[.]" 21 V.S.A. § 618(a). Thus, to have a compensable injury, a claimant must satisfy two elements by proving that the injury: "(1) arose out of the employment, and (2) occurred in the course of the employment." *Miller v. Int'l Bus. Machines Corp.*, 161 Vt. 213, 214 (1993).

3. The parties' dispute in this case centers on the second of these elements: whether his fall occurred "in the course of" his employment. That element "tests 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." *Cyr v. McDermott's, Inc.*, 2010 VT 19, ¶ 13.

4. The Department has previously analyzed whether a slip and fall on a non-party's premises during the morning of a planned business trip occurred in the course of employment. *See Moreton v. State of Vermont Department of Children and Families*, Opinion No. 17-14WC (December 24, 2014).

5. In *Moreton*, the claimant's usual commute was from her home in Shelburne, Vermont to her workplace in Essex, Vermont. For three days in December 2013, however, she and multiple coworkers were required to attend a training in Stowe, Vermont. Each training session was to last from 9:00 AM until 3:30 PM, and the employer indicated that it would pay for time between 8:00 AM until 4:30 PM. The claimant and several coworkers arranged to carpool to the training sessions by meeting at 7:30 AM at a South Burlington Starbucks approximately 0.3 miles from the highway entrance ramp on the way to Stowe. Claimant arrived at the Starbucks at 7:30 AM to meet her coworkers to carpool to Stowe; she had already eaten breakfast and packed a lunch. As she entered the restaurant, she slipped and fell on ice, suffering personal injuries. *See generally id.*

6. In analyzing whether that fall occurred in the course of that claimant's employment, the Department separately considered the links of time, place, and activity. With respect to time, it noted that the claimant's injury occurred approximately 30 minutes prior to the start of her workday, which was insufficient to sever the causal link to her employment. With respect to activity, it noted that the primary purpose of meeting at Starbucks was to arrive at the training site on time, a purpose sufficiently related to her job duties to have occurred in the course of her employment.

7. The bulk of the Department's analysis in *Moreton* concerned the second factor, the connection between the place of the injury and the claimant's employment. In this respect, it applied Vermont's "going and coming" rule and the "traveling employee" exception to that rule. Under the "going and coming" rule, an employee is generally not within the course of employment when he or she is injured while traveling to and from work, unless the injury occurs on the employer's premises. The "traveling employee" exception to that rule applies to employees 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*, *supra*, Conclusion of Law No. 13. There is also an exception to the traveling employee exception: if a traveling employee "deviates substantially from a journey's business purpose" to pursue personal interests, an injury sustained during the deviation is not within the course of employment. *Id.*, Conclusion of Law No. 14.

8. The Department in *Moreton* found that the claimant's "sole purpose" in traveling to the Starbucks where she was injured was to meet her coworkers so that they could ride together to the Stowe training session. Under the circumstances of that case, the Starbucks was "sufficiently connected to her job duties as to have been in the course of her employment." *See id.*, Conclusions of Law Nos. 19-22.

Compensability of Claimant's Injury

9. Assessing whether Claimant's injury occurred in the course of his employment in this case requires an assessment of each of the three factors discussed in *Moreton*—time, place, and activity. I consider each factor in turn below.

a. Time

10. The first factor, time, favors a conclusion that Claimant's injury occurred in the course of his employment. He fell sometime after 8:40 AM. Although Claimant set his own schedule, his ordinary work day was from approximately from 8:00 AM to 5:00 PM. *See* Finding of Fact No. 1, *supra.* Particularly considering the expected driving time from his home in Proctor, Vermont to his business destination in Lebanon, New Hampshire, his fall also occurred reasonably close in time to his 10:00 AM work appointment. Considered in isolation, this factor is consistent with Claimant's fall having occurred in the course of his employment. *Cf. Moreton*, *supra*.

b. Place

11. With respect to the second factor, place, however, I find it important that Claimant would have eventually driven to Key Honda later that same day, with or without a New Hampshire work appointment. *See* Finding of Fact No. 13, *supra.* This makes Key Honda fundamentally unlike the Starbucks in *Moreton*, which the claimant had no purpose to visit other than as a rendezvous point for a work-related carpool.

12. Although Claimant might have otherwise gone to Key Honda *later* in the day, his sworn affidavit makes clear that he would have gone there to repair his car the same day, making it difficult to say that his employment caused him to be there. *See* Finding of Fact No. 13, *supra*. Additionally, there is no evidence that his employment caused the flat tire that generated his need to go to Key Honda in the first place. Nor is there any evidence that his planned work trip materially affected the risks that Claimant encountered at Key Honda. While it is *possible* that the ice conditions at Key Honda may have changed between the morning and afternoon of that day, *cf. id.*, that possibility is too speculative to create a genuine issue of material fact as to any meaningful change in Key Honda's risk profile caused by Claimant's employment with Defendant.

13. I also find it important that Claimant formed the specific intention to travel to Key Honda before leaving his home. While this fact standing alone is not dispositive, Claimant's selection of a particular non-work-related destination that does not have a specific connection to employment (such as carpooling with coworkers in *Moreton*) before he even got into his car weighs in favor of construing Claimant's travel as two separate trips, one personal and one business, rather than one single business trip with a stop along the way. It is true that the claimant in *Moreton* also had the South Burlington Starbucks in mind when she left her home. However, as discussed above, she had no reason to travel there other than for her work-related carpool, while Claimant would have traveled to Key Honda on the same day as his injury anyway.

14. Also relevant to this analysis is the fact that Claimant's purpose in traveling to Key Honda was to repair his personal vehicle. Although he certainly used that vehicle for work, its upkeep was undisputedly his own responsibility and his employer did not control where he obtained maintenance services. *See* Findings of Fact Nos. 2-5, *supra.* Moreover, even if he did not use his car for business purposes, he would have needed to repair his tire anyway.

15. Weighing all these factors, I cannot conclude that Claimant's trip from his home to Key Honda was part of a business trip for the purposes of the "traveling employee" exception to the "going and coming" rule. Had he not been injured, and had he driven from Key Honda to his business appointment in New Hampshire, his business trip would have begun upon his departure from Key Honda.[3] Under the

[3] Because Claimant's business trip had not yet begun at the time of his injury, it is not necessary to analyze the materiality of any putative deviation therefrom. *Cf. Moreton*, *supra*.

facts presented, I conclude that his business trip had not yet begun when he slipped and fell.

16. The conclusion that Claimant's business trip had not yet begun at the time of his injury distinguishes this case from *Lopez v. The Howard Center*, Op. No. 12-14WC (August 7, 2014), upon which Claimant also relies. In *Lopez*, the claimant was a case manager for clients who suffered from mental illnesses. While she was at her office, she realized that she had left a book at home that she wanted to loan to a client as a part of his treatment. That client's appointment was at 1:00 that afternoon. During the noontime hour, the claimant left her office to retrieve the book from her home. Once there, she entered, got the book, and put it in her vehicle. She then left her vehicle again to double-check whether the door to her home was locked. As she opened it, her dog escaped into her yard. Cognizant of the short time before her upcoming appointment, she went up on her deck to retrieve a ball so that she could lure her dog back inside, but she tripped on a hammock and fell into a sliding glass door, resulting in personal injuries. Although those injuries occurred at home, her trip from her office to her home was part of a business errand for the work-related purpose of obtaining a book for a client. That business trip had therefore already begun at the time of her injury because the purpose of her trip home was to retrieve a work-related book, placing her within the "traveling employee" exception to the "going and coming" rule. *See generally id.*

17. Here, by contrast, Claimant drove from his home to Key Honda to have his tire fixed, a task he would have had performed that same day at the same place with or without a planned business trip to New Hampshire. Although he was planning to begin a business trip that day, that business trip had not yet started for the reasons articulated at Conclusions of Law Nos. 11-16, *supra.* As such, the Department's analysis in *Lopez* does not render Claimant's fall within the course of his employment.

18. For all these reasons, I conclude that Claimant is not covered by the "traveling employee" exception to the "going and coming" rule, *cf. Moreton* and *Lopez*, *supra*, and that the second factor identified in *Moreton*—place—strongly favors a conclusion that Claimant's injury did not occur in the course of his employment.

c. Activity

19. The third factor, activity, is closely related to the second: Claimant was at the *place* of his injury (Key Honda) because he sought that business's services with respect to the *activity* of automotive repair. As discussed above, that was an activity in which Claimant would have engaged regardless of whether he had a business appointment that morning and regardless of whether he used his personal vehicle for work. For substantially the same reasons as discussed *supra* at Conclusions of Law Nos. 11-18, this factor favors a finding that Claimant's injury did not occur in the course of his employment.

Conclusion

20. For an injury to be compensable under Vermont's workers' compensation law, it must both (1) arise out of employment, and (2) occur in the course of the employment. *See* 21 V.S.A. § 618; *Miller v. Int'l Bus. Machines Corp.*, 161 Vt. 213, 214 (1993).

21. Balancing the factors of time, place, and activity, I conclude that Claimant's injury at Key Honda on January 14, 2020 fails the second element of this standard because it did not occur in the course of his employment.[4] *See* Conclusions of Law Nos. 9-19, *supra*. As such, I need not analyze the first element, *i.e.*, whether it arose out of his employment.

ORDER:

As a matter of law, Claimant's injuries did not occur in the course of his employment. Therefore, Defendant's Motion for Summary Judgment is **GRANTED**, Claimant's Motion for Summary Judgment is **DENIED**, and this claim is **DISMISSED**.

DATED at Montpelier, Vermont this 9th day of March 2021.

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Michael A. Harrington
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.

[4] This is not to say that an employee injured while obtaining automotive repairs close in time to a business trip can never establish that such injuries occurred within the course of his or her employment. Such inquiries are always fact-intensive and depend upon the multifactorial balancing of the circumstances specific to each case.