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Bob Allyn Masonry v. David Murphy
124 Nev. Adv. Op. No 27
May 8, 2008[1]

Employment Law–Workers' Compensation

Summary:

Appeal from district court order granting judicial review of workers' compensation case.

Disposition/Outcome:

Reversed and Remanded with instructions. The Court reversed the district court's grant of judicial review. The court remanded to the workers' compensation appeals administrator to consider whether Respondent Murphy established a causal relationship between his injury and risks incident to employment and to resolve the factual issue of when Murphy ceased performing the errand at issue for his employer.

Factual and Procedural History:

Respondent Murphy was employed as a grout pump operator by Petitioner Bob Allyn Masonry ("Bob Allyn"). On a day he was not scheduled to work, he was asked by Bob Allyn to pick up equipment at a construction site and deliver it to a job site. Murphy complete the delivery but was injured while on his way to a personal side job.

Murphy filed a workers' compensation claim against Bob Allyn, the claims administrator denied the claim concluding that Murphy did not establish that his injuries arose out of and in the course of employment. The parties proceeded to a hearing before the appeals officer. The appeals officer affirmed the claim administrator's denial because he concluded that Murphy's injuries occurred after his special errand and the injuries did not arise out of and in the course of employment.

Murphy petitioned the district court for judicial review. The district court granted review and determined that the appeals officer did not properly consider the special errand exception. The appeals officer issued a clarification explaining that notwithstanding the special errand exception's applicability, Murphy failed to establish that his injuries arose out of and in the course of employment. The district court still granted the petition for judicial review and reversed the appeals administrator's decision concluding that Murphy was performing a special errand for Bob Allyn and was therefore entitled to compensation for his injuries. Bob Allyn appealed.

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[1] By: Tyler Ure

Discussion:

NRS 616C.150(1) requires an injury (1) arise out of the employment and (2) occur during the course of employment for an employee to be entitled to compensation.

Injury arising out of employment

An injury arises out of employment where there is a causal connection between the injury and the work so that the injury is related to some risk involved within the scope of employment. The court reiterated its rejection of the "positional risk rule" which only requires that an employee show that "but for" her employment she would not have been in the situation that caused her injury.

The Court adopted the "actual street-risk rule" for situations where employees are required to use streets and highways to carry out their job duties, making streets and highways a place of employment. Under the actual street-risk rule, the employee must show that his duties include presence on public streets and that the injury arose from an actual risk of presence on public streets. The Court further explained the causal connection requirement is satisfied because the risks of streets and highways are converted to risks of employment. As long as Murphy was injured because of a risk inherent to the highways while he was using them to carry out employment duties, the injuries arose out of employment. However, in order to be entitled to compensation, Murphy must also prove that his injuries occurred during the course of his employment.

Injury occurring during the course of employment

The Court has adopted the going and coming rule to ensure that employers are not liable for employee injuries that occur during travel to and from work. However, the court also recognized the special errand exception which encompasses injuries "that are normally exempted from coverage on the ground that they did not arise in the course of employment . . . if they occur while the employee is in transit to or from the performance of an errand outside the employee's normal job responsibilities."[2] Although not previously addressing the issue directly, the Court stated that the exception applied when returning from special errand. Additionally, the fact-finder must determine that the injury occurred while on a portion of roadway that the employee would not have been on if he had not performed the special errand for his employer.

The Court determined that there is an issue of fact whether Murphy sustained his injuries while returning from the special errand or if the injuries were sustained during the personal part of his return journey.

[2] 124 Nev. Adv. Op. No. 27, at 12.

Conclusion:

There is an issue of fact regarding whether Murphy's injuries arose out of and during the course of his employment. To be entitled to compensation, Murphy must show that his injuries were caused by the risks of the street that his employment caused him to face. Additionally, Murphy's injuries must have been caused on a return journey from the special errand, not after resuming a personal return journey.