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### Cannon Cochran Mgmt. Servs., Inc. v. Figueroa, 136 Nev. Adv. Op. 51 (July 30, 2020)

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## WORKERS' COMPENSATION: EXCEPTIONS TO THE "GOING AND COMING RULE"

### **SUMMARY**

The Court adopted a totality-of-the-circumstances approach to determine whether a law enforcement officer's workers' compensation claim qualifies for the law enforcement exception to the "going and coming rule." The Court also held that the "distinct-benefit" exception to the "going and coming rule" does not apply to law enforcement officers because there are overlapping considerations between this exception and the law enforcement exception. The Court affirmed the district court's order granting the Respondent's petition for judicial review and reversed the appeals officer's decision, characterizing it as "arbitrary and capricious."

### **BACKGROUND**

Respondent David Figueroa ("Figueroa") was recovering from an injury and assigned to a re-acclimation program at Las Vegas Metropolitan Police Department ("LVMPD"). On March 7, 2015, Figueroa was on duty and his shift was scheduled to end at 12:30 A.M. At 11:45 P.M., his sergeant notified him that he could leave early. However, Figueroa would still be paid for the remainder of his shift and was instructed to practice riding his motorcycle, to get him reacclimated with his motorcycle duties. Figueroa was also told to keep a close eye on his phone in case LMVPD tried to contact him. Finally, Figueroa was told he was to abide by LVMPD's employment policies, which include refraining from drinking alcohol. At 12:25 A.M., Figueroa was struck by another vehicle and subsequently placed in a medically induced coma for six days. Figueroa was unable to work for the following year and a half.

Figueroa filed a workers' compensation claim for the injuries he sustained while working on March 7, 2015. Appellant Cannon Cochran Management Services, Inc. denied the claim and Figueroa subsequently appealed the denial. The appeals officer also denied Figueroa's claim, finding that Figueroa's injury did not occur in the course and scope of employment. The appeals officer also determined Figueroa did not qualify for any exception to the general rule that excludes compensation for workers traveling to and from work. Figueroa filed a petition for judicial review, which was granted by the district court. Additionally, the district court found Figueroa's incident on March 7, 2015 arose out of and in the course of his employment with LVMPD. Following the district court's decision, Cannon Cochran Management Services, Inc. filed this appeal.

### **DISCUSSION**

The Court reviewed the administrative agency's decision without giving deference to the district court,<sup>2</sup> and "[determined] whether the agency's decision is supported by substantial evidence."<sup>3</sup> Pursuant to NRS 616C.150(1), employees are eligible to receive compensation for their injuries if the injury occurred during the course and scope of their employment; a claimant

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<sup>1</sup> By Dianna Saucedo-Chirinos.

<sup>2</sup> *City of Reno v. Bldg. & Constr. Trades Council of N. Nev.*, 127 Nev. 114, 119, 251 P.3d 718, 721 (2011).

<sup>3</sup> *Tighe v. Las Vegas Metro. Police Dep't*, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994).

must establish this by a preponderance of the evidence.<sup>4</sup> If there is a “causal connection between the injury” and the employee’s work or workplace, then the injury is considered as having occurred “within the course of employment.”<sup>5</sup>

The Court recognized the long-standing “going and coming rule” which impedes an injured employee from recovering for injuries that occur while they “travel to or from work.”<sup>6</sup> The “going and coming rule” has two notable exceptions though: 1) the distinct-benefit exception and 2) the law enforcement exception.<sup>7</sup> The distinct-benefit exception allows employees who are on their way to or from work to pursue a workers’ compensation claim if their travel “confers a distinct benefit upon the employer.”<sup>8</sup> The law enforcement exception allows law enforcement officers to pursue workers’ compensation claims for injuries sustained during travel because they have a responsibility for enforcing the law while traveling on public roads.

The Court acknowledged that there are similarities between the two exceptions, especially because courts that decide whether the law enforcement exception applies consider whether a law enforcement officer conferred a benefit to their employer. Because of this redundancy (the conferred benefit factor), the Court determined that the distinct-benefit exception does not apply to law enforcement officers and the law enforcement exception is reserved for law enforcement. The Court concluded that the conferred benefit factor is one of many to consider when determining whether the law enforcement exception applies. Additionally, the Court determined that this is not a dispositive element, as law enforcement officers are “‘on call’ in a special sense”<sup>9</sup> and courts must use a totality-of-the-circumstances test to determine if the law enforcement exception applies.<sup>10</sup>

The Court applied a totality-of-the-circumstances test to determine whether Figueroa qualifies for the law enforcement exception. Because Figueroa was on the clock, being paid, under the control of LVMPD, and not fully discharged from work responsibilities for the day, the Court found Figueroa’s injury did occur during the course and scope of his employment.

## **CONCLUSION**

The Court held that the appeals officer’s denial of Figueroa’s workers’ compensation claim was an “arbitrary and capricious” decision, given the substantial evidence shown on the whole record. The Court affirmed the district court’s order granting Figueroa’s petition for judicial review and reversed the appeals officer’s decision.

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<sup>4</sup> NEV. REV. STAT. § 616C.150(1) (1993).

<sup>5</sup> *Fanders v. Riverside Resort & Casino, Inc.*, 126 Nev. 543, 546–47, 245 P.3d 1159, 1162 (2010).

<sup>6</sup> *MGM Mirage v. Cotton*, 121 Nev. 396, 399, 116 P.3d 56, 58 (2005).

<sup>7</sup> *Tighe*, 110 Nev. at 635–36.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 636.

<sup>10</sup> *See Mineral Cty. v. Indus. Comm’n of Colo.*, 649 P.2d 728, 730 (Colo. App. 1982); *City of Springfield v. Indus. Comm’n*, 614 N.E.2d 478, 480–81 (Ill. App. Ct. 1993).