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Providence Corp. Development v. Kaycean Buma, 139 Nev. Adv. Op. 19 (Jul. 13, 2023)¹

WORKER’S COMPENSATION: FORESEEABILITY NOT A REQUIREMENT OF THE
“TRAVELING EMPLOYEE RULE”

Summary

An employee who is injured while on work-related travel does not need to show that the activity which harmed him was foreseeable to his employer in order to recover under Nevada’s workers’ compensation statutes.

Background

This opinion arises from a workers’ compensation action involving the 2015 death of Jason Buma. Jason was traveling out of state to attend a work conference and was staying at a friend’s ranch. While riding ATVs around the ranch, Jason suffered a fatal injury. As a result, Jason’s widow and child requested workers’ compensation benefits.

This case had previously been before the Court in 2019. In that case, the appeals officer had denied the Bumás’ claims. The Bumás’ petitioned for judicial review but the district court denied that petition. There, the Court concluded that the appeals officer had failed to apply the “traveling employee rule,” and remanded. On remand, the appeals officer again denied the Bumás’ request for benefits and found that Jason’s use of the ATVs was not “foreseeable” to Jason’s employer. The Bumás filed another petition for judicial review, which the district court granted. The grant of that petition was brought before the Court.

Discussion

The Traveling Employee Rule Does Not Impose a Requirement That an Employee’s Activities Need to be Foreseeable to His Employer in Order for the Employee to Recover Workers’ Compensation Benefits

The issue in this appeal is that the appeals officer misapplied the *Buma* standard regarding the traveling employee rule.² That case held that when an employee is injured during work-related travel, they may recover if the injury was a result of “eating, sleeping, and ministering to personal needs away from home.”³ The key analysis in evaluating the issue is whether the employee (a) was “tending reasonably to the needs of personal comfort, or encountering hazards necessarily incidental to the travel or work” or, alternatively, (b) was engaged in a distinct departure from the purposes of employment and was pursuing strictly personal amusement.⁴

The appeals officer found that riding ATVs was not a distinct departure from Jason’s personal needs because using the ATVs was a reasonable way to traverse the ranch. The appeals officer did not decide that riding ATVs amounted to merely personal amusement. Instead, he found that the distinct departure exception applied because it was not foreseeable to Jason’s employer that he would be riding ATVs on the business trip.

¹ By Benjamin Reber.

² See *Buma v. Providence Corp. Development*, 135 Nev. 448, 451, 453 P.3d 904, 908 (2019).

³ *Id.* at 451, 453 P.3d at 908.

⁴ *Id.* at 453, 453 P.3d at 909.

Conclusion

The Court held that the appeals officer erred in requiring an element of foreseeability in its “traveling employee rule” analysis. *Buma* did not, and does not, include a foreseeability element. The Court affirmed the district court’s order granting the Bumas’ petition for judicial review.