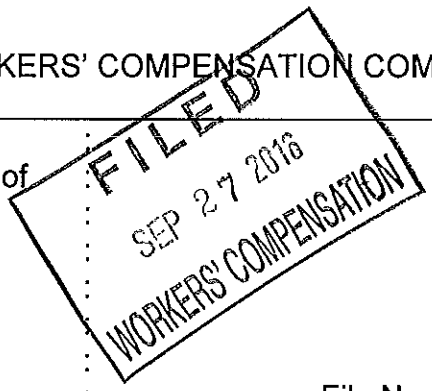
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



RHONDA METZ, Surviving Spouse of JOSEPH METZ, Claimant, vs. HORIZON AG PRODUCTS, Employer, and TRAVELERS PROPERTY AND CASUALTY CO. OF AMERICA, Insurance Carrier, Defendants.	File No. 5052858 A R B I T R A T I O N D E C I S I O N Head Note No.: 1804

STATEMENT OF THE CASE

Claimant, Joseph Metz, by Rhonda Metz, surviving spouse, has filed a petition in arbitration and seeks workers' compensation from Horizon Ag Products, employer and Travelers Property and Casualty Company of America, insurance carrier, defendants.

This matter was heard by Deputy Workers' Compensation Commissioner, Stan McElderry in Sioux City, Iowa.

ISSUE

The parties submitted the following issue for determination:

Whether Joseph Metz's death was an injury that arose out of and in the course of his employment which entitles Rhonda Metz to survivor's benefits and burial costs.

FINDINGS OF FACT

The undersigned having considered all of the evidence and testimony in the record finds:

The claimant, Joseph Metz was married to Rhonda on September 19, 1986 and still married on June 29, 2015. They had three children, one of which was a dependent

minor on June 29, 2015. On June 29, 2015 at approximately 2:00 p.m. the claimant was killed on I-29 in route home to South Sioux City, Nebraska from the employer's place of business in Onawa, Iowa when another driver hit his vehicle head on. The issue is whether the death is a compensable work injury.

Jeffrey S. Von Lintel is the Vice President of Operations of Horizon Ag. (Exhibit 4) Mr. Von Lintel is the individual who specifically contacted and hired Mr. Metz to manage (plant manager) the Onawa, Iowa operations of the employer. That plant had three employees: Joseph Metzer, Plant Manager; Todd Peasley, Assistant Manager (plant manager after the death of Mr. Metz); and a non-supervisory laborer.

As a condition of his employment Mr. Metz claimant was required to have a valid driver's license, drive a vehicle to work so that it was available to go get parts for repairs, and answer a company provided cell phone when called 24 hours 7 days a week. The vehicle claimant was driving at the time of death was licensed in claimant's name, but it was "sold" to him by Mr. Von Lintel, and no payments were ever made or required. The company did not have a company owned vehicle available for use by any employee at the Onawa location. The vehicle from Mr. Von Lintel was so that the claimant would have reliable transportation to work, and for work purposes. The claimant had no set hours and had to be available to come in whenever he was needed. A major reason for all of the above requirements was because the plant, which manufactures fertilizer, is dependent on a machine called the centrifuge. The centrifuge is the bottleneck of the operation and must be keep running at all times the plant is in operation or product cannot be finished. Because of the centrifuge, the plant had extended hours of operation and someone had to be present at all times the centrifuge was running. Failure of the centrifuge could be catastrophic. (Ex. 4, p. 24) If something happened to the centrifuge it was to be repaired right away due to its critical nature for the plant's operation. Mr. Metz or Mr. Pealsey was expected to get parts by driving a vehicle to Bomgaars 1-1/2 miles away for this purpose. The third employee who was hourly was not to go get parts. Mr. Metz was expected to be available to take calls and return to the plant whenever needed. Sometimes he was called to the plant in the middle of the night.

Although Mr. Metz was going home to rest on the day he was killed he was in the course of his employment. Since Mr. Metz was required to have a car available to get parts for the critical centrifuge, and a company owned car was not provided, the car used by Mr. Metz was an instrumentality of the business that was subject to business use day or night. Additionally, Mr. Metz was provided a company cell phone that he was expected to answer whenever called, meaning he was always on call. And on call such that he was expected to go into the plant whenever required, day or night, as a 24/7 employee. Benefits to the employer were numerous. It provided no car but had the use of one. It paid no overtime to Mr. Metz but had his services available at all times. At one point in the employment the employer even rented a motel closer to the plant so that the claimant could work longer hours and be in to the plant quicker. These arrangements also meant that the plant could be run with few employees.

REASONING AND CONCLUSIONS OF LAW

The issue in this case is whether Joseph Metz's death was an injury that arose out of and in the course of his employment which entitled Rhonda Metz to survivor's benefits and burial costs.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The Workers' Compensation Act exists for the benefit of the injured worker and within reason, the law is to be construed liberally to benefit the worker and to compensate a worker who is injured as a result of a condition of the employment. Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

On the other hand, the "statute is not a charity whose administration depends upon sympathy, but rather it is a humanitarian law to be administered by logical rules with compensation paid not as a gratuity, but as a matter of contract." Lawyer and Higgs, Workers' Compensation, 2004 Edition at page 4, citing Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 73 N.W.2d 27 (1955). Neither does the Workers' Compensation Act compel the employer to be an insurer of all hazards that an employee may encounter. See Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996).

The claimant has the burden of proving by of preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

An employee does not cease to be in the course of the employment merely because the employee is not actually engaged in doing some specifically prescribed task, if, in the course of the employment, the worker does some act deemed necessary for the benefit or interest of the employer. Waterhouse Water Cond. v. Waterhouse, 561 N.W.2d 55 (Iowa 1997).

The "in the course of" requirement demands that the claimant establish "the injury [arose] within the time and space boundaries of the employment, and in the

course of an activity whose purpose is related to the employment." Bailey v. Batchelder, 576 N.W.2d 334 (Iowa 1998).

Generally, an employee who has both a fixed place to work and fixed hours to work is not covered by the workers' compensation law on the way to and from work. See Waterhouse, 561 N.W.2d at 57-58; Frost v. S.S. Kresge Co., 299 N.W.2d 646, 648 (Iowa 1980). The hazards encountered by an employee in going to or returning from work are not ordinarily incident to his employment within the meaning of the phrase as used in the workers' compensation law. Quaker Oats Co. v. Ciha, 552 N.W.2d at 150-51; Frost, 299 N.W.2d at 648. An employee traveling to work is engaged in personal business; the employment commences only after the employee reaches the employer's premises. See Otto v. Independent Sch. Dist., 237 Iowa 991, 994, 23 N.W.2d 915, 916 (1946). This is frequently referred to as the "going and coming" rule. The going and coming rule applies only to employees who have both a fixed place and fixed hours of work. McMullin v. Department of Revenue, 437 N.W. 2d 596, 599 (Iowa App. 1989).

The going and coming rule is not applicable to employees who are required to and are traveling in the course of performing their job duties as they generally are considered in the course of their employment from the time they leave home until the time they return home, such that many activities undertaken for the employee's personal comfort and sustenance have been found to be activities in the course of the employment. See Crees v. Sheldahl Telephone Co., 258 Iowa 292, 139 N.W.2d 190 (1965); Lamb v. Standard Oil Co., 250 Iowa 911, 96 N.W.2d 730 (1959); Walker v. Speeder Mach. Corp., 213 Iowa 1134, 240 N.W. 725 (1932). On the other hand, even a traveling employing is not injured in the course of the employment if the injury occurs outside of the scope of work duties while the employee is furthering a purely personal purpose or pursuing a purely personal pleasure. Volk v. International Harvester Co., 252 Iowa 298, 106 N.W.2d 649 (1960); Strait v. Woodward State Hosp. Sch., File No. 955692 (App. June 30, 1993). Yet, traveling employees cannot fairly be expected to lock themselves in their motel rooms and hide from every possible danger during those times when the furtherance of employer's business keeps them away from their own homes but neither actively engaged in job duties nor ministering to purely subsistence needs such as eating and resting. If an injury occurs while such an employee is engaged in an otherwise legal and appropriate recreational activity that relieves the ennui attendant to being away from one's own social milieu that injury may be compensable. See Vandarwarka v. Environmental Abatement, Inc., File No. 1303751, (App., May 23, 2002).

The question often comes down to the reasonableness of the employee's activity. Was the employee, when injured, doing something that the employee reasonably could be expected to do given the overall time, place and circumstances of the employment? The answer to that question involves a fine balance between the beneficent purposes of the Workers' Compensation scheme and the fact that the employer and its compensation carrier are not general insurers of all hazards to which any employee may be subject. For that reason, the mixed question of law and fact that the issue of whether a traveling employee's injury, which was incurred while not actively

performing job duties, arose both out of and in the course of employment can only be resolved by considering the totality of the circumstances under which the employee was injured. Ward v. Numanco, File No. 5011677 (Arb., November 23, 2005).

The claimant had no set hours of work. The coming and going rule does not apply to the claimant. He would be covered at a minimum from leaving home until his return home absent a deviation. There was no evidence that the claimant had deviated. He was going home after coming in to work at 4 a.m. (more evidence of the claimant having no set hours). His death is therefore covered by workers' compensation.

Another ground for benefits here is the requirement that the claimant have a car available for business use. When an employee is required to take his car to work, and to make emergency calls outside regular working hours the car is "an instrumentality of the business." Davis v. Bjorsenson, 293 N.W.2d 829 (1940). Also see Medical Assoc. Clinic v. First Nat. Bank, 440 N.W.2d 374 (Iowa 1989).

ORDER

THEREFORE IT IS ORDERED:

Defendants pay claimant weekly benefits payable at the rate of seven hundred ninety-six and 44/100 dollars ($796.44) during such time as she qualifies for those benefits pursuant to Iowa Code section 85.31(1)(a).

Defendants pay claimant her decedent's burial expenses in the total amount of seven thousand five hundred and 00/100 dollars ($7,500.00).

Defendants, pursuant to Iowa Code section 85.65, pay twelve thousand and 00/100 dollars ($12,000.00) to the Second Injury Fund of Iowa.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

That defendants shall pay the costs of this action in the amount of five hundred twelve and 13/100 dollars ($512.13) pursuant to rule 876 IAC 4.33.

Signed and filed this 27th day of September, 2016.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.