**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

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| **WINDOWS BY PELLA, INC,**<br>**and**<br>**SELECTIVE INSURANCE COMPANY OF THE SOUTHEAST,**<br>**Petitioners,**<br>**vs.**<br>**NICHOLAS KVIDERA,**<br>**Respondent.** | **Case No. CVCV055476**<br>**RULING ON PETITION FOR JUDICIAL REVIEW** |

The above-captioned matter came before the Court on January 11, 2019. Windows by Pella, Inc. and Selective Insurance ("Petitioners") were represented by Attorney Jeffrey Lanz. Nicholas Kvidera ("Respondent") was represented by Attorney Paul McAndrews Jr. The Court, having considered the arguments of the parties and having reviewed the file and the applicable case law, now enters the following ruling.

## FACTUAL AND PROCEDURAL BACKGROUND

Respondent was involved in a motor vehicle accident on November 20, 2012. Respondent contends the accident arose out of and in the course of his employment with his employer, Windows by Pella, Inc. ("Pella"). Petitioners claim that the accident occurred after Respondent had deviated from his employment and therefore his injury did not occur in the course of his employment.

Respondent is a traveling maintenance and repair employee for Pella. On the date of his injury he was dispatched from Pella's home offices in Waterloo to various jobs around the Iowa City area. While working on his final job in Brooklyn, Respondent realized he had forgotten a company-owned tool at a previous job site in North Liberty. After returning to North Liberty to retrieve the tool, Respondent's work day was finished and he began his drive to his home near Traer. On his drive, Respondent decided

to drive north to Cedar Rapids rather than west, back through Brooklyn. After turning west onto Highway 30, Respondent decided to turn off the highway to visit his daughter who lived and worked in Cedar Rapids. Respondent claims he took the alternate route for two reasons. First, it was almost dusk so he would to wait until night had fallen because, in his opinion, it would be easier to drive in the dark when it is foggy than daylight. Second, Respondent wished to visit his daughter and deliver some money to her. After a short visit with his daughter, Respondent returned to his route on Iowa Highway 30 en route to Traer.

As Respondent was driving west on Highway 30, the foggy weather persisted, and a pickup truck towing a trailer crossed the highway immediately in front of Respondent, who collided with the trailer. The accident occurred in the two westbound lanes of Highway 30, which is a four-lane highway. The accident caused severe injuries to Respondent.

Respondent claimed his injuries were compensable as workers' compensation benefits but Petitioners disputed this and denied benefits. A hearing on the Respondent's petition was held on December 16, 2014, before the deputy workers' compensation commissioner. The deputy issued an Arbitration Decision on March 3, 2016, granting benefits to Respondent, finding that his trip to North Liberty was to retrieve a work tool, thus categorizing the accident to have occurred in the course of his employment. The deputy also found that Respondent suffered a forty-five percent (45%) loss in earning capacity due to his work injury with a commencement date of March 11, 2014. Petitioners appealed the deputy's decision.

An Appeal Decision affirmed the deputy's original decision on November 20, 2017. The appeal affirmed and adopted as the final agency decision the portions of the proposed Arbitration Decision. Petitioners filed this Petition for Judicial Review on December 19, 2017.

## STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law by the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). The Court "may grant relief if the agency action has prejudiced the

substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in section 17A.19 (10) (a) through (n)." *Burton v. Hilltop Care Cntr.*, 813 N.W.2d 250, 256 (Iowa 2012) (quoting *Evercom Sys., Inc. v. Iowa Utilities Bd.*, 805 N.W.2d 758, 762 (Iowa 2011)). Where an agency has been "clearly vested" with fact-finding authority, the appropriate "standard of review [on appeal] depends on the aspect of the agency's decision that forms the basis of the petition for judicial review"—that is, whether it involves an issue of (1) findings of fact, (2) interpretations of law, or (3) application of law to fact. *Burton*, 813 N.W.2d at 256.

The Court must also grant appropriate relief from agency action if such action was "[b]ased upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(c). With respect to such provisions of law, the Court is not required to defer to the agency's interpretation. Iowa Code § 17A.19(11)(b). Additionally, the Court must grant relief from agency action that is "[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law," based upon a misapplication of law to the facts, or "[o]therwise unreasonable, arbitrary, capricious, or an abuse of discretion." Iowa Code § 17A.19(1)(l–n).

If "the claim of error lies with the ultimate conclusion reached, then the challenge is to the agency's application of the law to the facts, and the question on review is whether the agency abused its discretion by, for example, employing wholly irrational reasoning or ignoring important and relevant evidence." *Meyer*, 710 N.W.2d at 219. In other words, the Court will only reverse the Commissioner's application of law to the facts if "it is 'irrational, illogical, or wholly unjustifiable.'" *Neal*, 814 N.W.2d at 518 (quoting *Lakeside Casino v. Blue*, 743 N.W.2d 169, 173 (Iowa 2007); *see also Burton*, 813 N.W.2d at 256 ("When application of law to fact has been clearly vested in the discretion of an agency, a reviewing court may only disturb the agency's application of the law to the facts of a particular case if that application is 'irrational, illogical, or wholly unjustifiable.'").

**ANALYSIS**

Petitioners claim error by the commissioner for five findings: (1) Respondent did not deviate from the course of his employment when he violated a known work rule; (2) Respondent did not deviate from the course of his employment when he returned to North Liberty to retrieve his forgotten tool; (3) Respondent did not deviate from the course of his employment when he drove north to Cedar Rapids from North Liberty rather than taking the authorized route back through Brooklyn; (4) Respondent did not deviate from the course of his employment when he drove to visit his daughter instead of continuing on Highway 30; and (5) the commissioner erred when he did not consider Respondent's intention to be off the clock by 5:15 pm.

Violation of Work Rule

First, Petitioners claim that Respondent deviated from the course of his employment when he violated a known work rule. The work rule that Petitioners assert he violated was a limitation on the use of his company vehicle. Pella's company vehicles are "available for business use" and "are only for approved business purposes and may not be removed from the premises except for business use. No personal use of these vehicles allowed." Respondent violated this work rule, Petitioners contend, when he returned to the North Liberty job where he had forgotten a work tool. Instead, Respondent was only authorized to travel directly north to his home or to the employer shop in Waterloo according to Petitioners. Petitioners claim that because the work tool was inexpensive[1], Respondent's decision to return to a previous job site to retrieve the tool was unreasonable and thus removed him from the scope of employment.

Iowa workers' compensation case law holds that an injury in the course of employment includes any injuries to an employee while furthering the employer's business interests. *Quaker Oats Co. v. Ciha*, 552 N.W.2d 143, 150 (Iowa 1996). Furthermore, an employee does not "cease to be in the course of employment merely because he is not actually engaged in doing some specifically prescribed task, if . . . he [is doing] some act which he deems necessary for the benefit or interest of his employer." *Id.* When the commissioner considered Petitioners' claim that he violated a work rule, he found that "[t]here is actually

[1] Testimony at the hearing put the cost of the pry bar somewhere between $15 and $20.

nothing in the employer's work rules which prevented him from [returning to retrieve the tool]." The commissioner noted the testimony of other employees who testified they had returned to a previous job site to retrieve company-owned equipment in the past. The commissioner concluded that breaking from his authorized route in this circumstance was not a deviation from Respondent's employment and should not result in a denial of his claim. The Court agrees with this conclusion and does not find it to be "irrational, illogical or wholly unjustifiable."

Respondent's Route from Brooklyn to North Liberty

Next, Petitioners' claim that the commissioner erred when he found that the Respondent did not deviate from the course of employment when he left Brooklyn and drove back to North Liberty as opposed to driving back home, as he was authorized to do. The analysis for this claim of error is the same as above. Respondent believed that he was furthering his employer's business interests by retrieving the company's property which he had mistakenly left behind. The commissioner found Respondent's poor cost-benefit analysis as to the propriety of returning for the tool did not disqualify him from benefits and the Court finds that the commissioner's ruling is sound.

Respondent's Route from North Liberty to Cedar Rapids

Third, Petitioners' assert error based on Respondent's decision to drive to Cedar Rapids after his return to North Liberty instead of taking the authorized route back to Brooklyn and then to his home. Ordinarily, an employee traveling to and from work is not in the "course of employment" for workers' compensation purposes. *Thayer v. State*, 653 N.W.2d 595, 600 (Iowa 2002). But one exception to the "coming and going" rule is when an employee is provided with a company vehicle. *Waterhouse Water Conditioning, Inc. v. Waterhouse*, 561 N.W.2d 55, 58 (Iowa 1997). The "coming and going" rule does not apply if "the making of [the journey to and from work]... is in itself a substantial part of the service for which the worker is employed." *Id.* (quoting 1 Arthur Larson, *The Law of Workmen's Compensation* § 16.00, at 4–196 (1994)). This includes the provision of an automobile under the employee's control. *Id.* Respondent was driving his company vehicle when he drove through Cedar Rapids on his route home. Petitioners assert the rationale for Respondent's decision to drive north was so that he could visit his

daughter who lives near Cedar Rapids. However, driving to Traer by way of Highway 30 is the shortest route from North Liberty. Even if the route was also for the purpose of visiting his daughter, the Iowa Supreme Court has held that "if the trip has a dual purpose, both business and personal activities, on the trip home an injury is compensable." *Crees v. Sheldahl Tel. Co.*, 139 N.W.2d 190, 195 (Iowa 1965). An employee's departure from his usual work place "must amount to an abandonment of employment or be an act wholly foreign to his usual work." *Crowe v. De Soto Consol. Sch. Dist.*, 68 N.W.2d 63, 66 (Iowa 1955). There was nothing "wholly foreign" about Respondent driving north and west toward his prescribed destination rather than west and north. The alternate route Respondent chose was also not such a departure as to be "an abandonment of employment." The commissioner found the route through Cedar Rapids did not remove Respondent from the course of employment and the Court agrees.

Respondent's Visit to His Daughter in Cedar Rapids

Petitioners next take issue with the commissioner's ruling that Respondent did not deviate from the course of his employment with his decision to exit his route on Highway 30, to visit his daughter in Cedar Rapids. At the hearing, Respondent claimed that he exited Highway 30 to visit his daughter temporarily because of inclement weather, it was foggy, and in his experience it was easier to drive in the fog at night rather than the daytime. At the hearing, Respondent testified that many of the drivers on the road did not have their headlights on because there was still daylight. Respondent reasoned that a short trip off Highway 30 would allow time for darkness to settle in and fellow drivers would then have their headlights on when he continued his trip. The commissioner did not find Respondent left the course of his employment because his deviation to visit his daughter was not substantial, he returned to his route, and his explanation regarding the fog was credible. The Court does not see any reason to disturb the commissioner's findings. His route deviation was no more than a few miles and his explanation about allowing darkness to fall appears to be no different than a traveling employee pulling off the road to allow a thunderstorm to abate. Even if his route deviation did take him out of the course of his employment temporarily, his accident did not occur on his deviation but on his route back to his home. *See Lamb v. Standard Oil Co.*, 96 N.W.2d 730, 733 (Iowa 1959)(holding if employee returns to employment after

deviating prior to the injury, it is compensable). The commissioner found Respondent to be a credible witness and determined that it was not a significant deviation anyway. The Court finds no persuasive reason to find Respondent's injury non-compensable on the basis of a short jaunt with a proffered dual purpose which the factfinder found credible.

Respondent Did Not Intend to Work So Late

Finally, Petitioners' contend that Respondent was outside the course of his employment because he did not intend to be on the clock after 5:15PM, and the accident occurred at 5:59PM. This argument is unavailing. The commissioner determined that Respondent returned to North Liberty for the purpose of retrieving his work tool. Regardless of whether this was sound actuarial judgment on the part of Respondent, the commissioner found that this was the sincere reason for his trip back to North Liberty. Respondent's trip to get his work tool back was the reason he was on the clock later than he had anticipated. Because he retrieved his employer's property, he was acting in what he considered to be his employer's business interests. The fact he was working later than he expected is not relevant for compensability purposes.

## CONCLUSION

The commissioner's ruling finding Respondent's injury stemming from an automobile accident on November 20, 2012 is compensable is neither irrational, illogical, nor wholly unjustified. The commissioner did not commit an error of law. The Court affirms the commissioner's findings of fact and award of benefits.

## RULING

Petitioner's Petition for Judicial Review is **DISMISSED** and costs are taxed to Petitioners.

**IT IS SO ORDERED.**

State of Iowa Courts

**Type:** OTHER ORDER

| **Case Number** | **Case Title** |
|---|---|
| CVCV055476 | WINDOWS BY PELLA ET AL VS NICHOLAS KVIDERA |

So Ordered

Robert B. Hanson

**Robert B. Hanson, District Court Judge,**
**Fifth Judicial District of Iowa**