BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

AMY MALLOY, Claimant, vs. CARROLL AREA NURSING SERVICES, Employer, and CINCINNATI INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED FEB 01 2017 WORKERS COMPENSATION	File No. 5055317 ARBITRATION DECISION Head Note No.: 1402.30

Claimant Amy Malloy ("Malloy") filed a petition in arbitration on November 30, 2015, alleging she sustained an injury to her body as a whole in a car accident while working for the defendant, Carroll Area Nursing Services ("CANS") on October 14, 2014. CANS and the defendant, Cincinnati Insurance Company ("Cincinnati"), filed an answer on December 21, 2015, denying that the incident arose out of and in the course of Malloy's employment with CANS.

An arbitration hearing was held on November 3, 2016, at the Pottawattamie County Courthouse in Council Bluffs. Attorney Jacob Peters represented Malloy. Malloy appeared and testified. Attorney Matthew Phillips represented CANS and Cincinnati. Deborah Holtz, Ron Malloy, Cathy Williams, and Vickie Tibben testified. Exhibits 1 through 16, and A through E were admitted into the record. The record was left open through December 23, 2016, for the receipt of post-hearing briefs. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing the stipulations and issues to be decided. CANS and Cincinnati withdrew all affirmative defenses. The parties submitted an additional stipulation.

STIPULATIONS

1. An employer-employee relationship existed between Malloy and CANS at the time of the alleged injury.

2. At the time of the alleged injury, Malloy's gross earnings were $964.00 per week, she was married and entitled to five exemptions, and the parties believe her weekly rate is $639.89.

3. Prior to the hearing Malloy was paid no weeks of compensation.

4. The sole fighting issue in this case is whether or not Amy Malloy was in the course of her employment with Carroll Area Nursing Service (CANS) at the time of this automobile accident which occurred on October 14, 2014. If it is found that Malloy was not in the course of her employment at the time of this collision, then Malloy takes nothing. In the event it is found that Malloy was in the course of her employment at the time of this collision, she is entitled to a running award of healing period benefits from the time of the collision through the first triggering event of Iowa Code section 85.34.

5. The parties also stipulate that all of Amy Malloy's medical bills have been paid by her group health insurance. In the event it is found that Malloy was in the course of her employment at the time of this collision, it is agreed that the workers' compensation carrier is responsible for the payment and/or reimbursement of those bills.

ISSUES

1. Whether Malloy sustained an injury on October 14, 2014, which arose out of and in the course of her employment.

2. Should costs be assessed against either party?

FINDINGS OF FACT

Malloy lives with her husband and children in Walnut, Iowa. (Transcript, page 11; Exhibit E, p. 11) At the time of the hearing Malloy was 41. (Tr., p. 11) Malloy attended Iowa State University for two years after she graduated from high school. (Tr., p. 11) Malloy later returned to postsecondary training at Iowa Western Community College, and graduated with a nursing degree. (Tr., p. 11) In 2006, Malloy obtained a license as a registered nurse in Iowa. (Tr., p. 11) At the time of the hearing her license was inactive. (Tr., p. 11)

After graduating from nursing school, Malloy worked as a registered nurse for Mercy Hospital in Council Bluffs on the medical/surgical pediatric floor. (Tr., p. 12; Ex. E, p. 12) Malloy was involved in direct patient care where she assisted patients with activities of daily living, performed physical assessments, drew blood, started intravenous fluids, performed dressing changes, passed medication, directed admissions, and supervised licensed practical nurses and certified nurse aides. (Ex. E, p. 12)

In October 2007, Malloy left Mercy Hospital and accepted a position with CANS as a home care staff registered nurse. (Tr., pp. 11-13, 56; Exs. E, p. 12; 7, pp. 1-3) CANS operates a home health agency providing skilled nursing care, occupational therapy, physical therapy, speech therapy, home health services, and homemaker services. (Tr., p. 13; Exs. E, p. 12; 9, p. 7) Malloy worked in the Elk Horn office of CANS with Janet Ladenhoff, who is also a registered nurse. (Tr., pp. 16, 56, 106) Malloy lives approximately ten miles from the Elk Horn office. (Tr., p. 56)

CANS assigned patients to Malloy. (Tr., p. 16; Ex. 9, p. 8) Malloy provided home care nursing services to CANS' patients living in Marne, Atlantic, Avoca, Shelby, Minden, Harlan, Elk Horn, Kimballton, and Walnut, Iowa. (Tr., p. 14; Ex. 8, p. 9) On average Malloy worked with eighteen patients in the area. (Tr., p. 14) Malloy managed her own schedule, which was reviewed by the CANS administration. (Exs. E, p. 13; 9, pp. 8-9; Tr., pp. 128-29) Malloy testified CANS preferred she group patients living near a certain location together, so she would use her best judgment to schedule the times she visited her patients. (Tr., p. 24) Malloy's immediate supervisor was Tibben. (Tr., p. 92; Ex. 9, p. 7)

When Malloy visited a patient, she would inform the patient when she would return. (Tr., p. 24) Malloy performed injections, administered intravenous fluids, performed wound care, inserted tubes into patients, set up medication for patients, and completed necessary charting approximately forty hours per week. (Exs. E, pp. 12-13; 9, p. 10; Tr., p. 20)

Malloy completed the majority of her charting and billing on a laptop provided by CANS. (Tr., p. 17) At some point during the day or night Malloy would link her laptop to the CANS network. (Tr., p. 17)

Malloy drove to patients in her assigned area using her own car, and CANS reimbursed Malloy for her mileage. (Tr., p. 15) CANS required Malloy to install a GPS device in her car that could be moved from vehicle to vehicle. (Tr., p. 17) The GPS device kept track of Malloy's location. (Tr., p. 18) At the time of Malloy's accident on October 14, 2014, CANS had adopted the following mileage reimbursement policy:

> Employees who use a car in the performance of their duties with Carroll Area Nursing Service must keep the car in good working order. All employees using a car in the performance of their duties with Carroll Area Nursing Service must comply with the state insurance laws governing liability, property damage and bodily injury. Proof of auto insurance and driver's license must be submitted and will be kept in the employee's personnel file.
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> For all work related mileage (excluding miles between home and work), the employee will be reimbursed at a rate subject to and approved by Carroll Area Nursing Service's governing body.

When reading this policy keep in mind that most companies do not pay employees to drive to work. With this policy the agency will pay mileage for any miles above what you would normally have to drive to your office.

Every employee is hired to work out of a certain office. The office that they were hired to work out of is considered their base office.

From your house to your first client: calculate the mileage from your house to your first client then subtract the mileage you would have from your house to your base office. That difference is the amount of mileage you can write down for your first client of the day. Drive time does not start until after your first client. If you are driving from your house to the office, mileage and drive time start after you leave the office.

For example: you live 10 miles from your base office and you drive 15 miles to your first client, you would write down 5 miles. If the mileage to your first client is less than 10 miles you would have no mileage.

You do get mileage and drive time from client to client assuming they are done back to back. But if you would see, for example, two clients and go back home and later in the day you go to see another client – mileage to that client is figured like the first client of the day.

Leaving your last client of the day is figured the same as the first client of the day – where you would take the mileage from the client to your home and subtract the mileage from your home to your base office. Drive time will not be paid when you leave your last client to go home or if you are bringing a car to the office.

Mileage for Sundays, holidays and evening visits (6 p.m. to 7 a.m.) will be paid as before. From the employee's home to client's home and back home again.

When attending an inservice or staffing, mileage will be paid from your home or your base office, whichever is closer, and back.
Revised 4/14

(Ex. A, pp. 1-2)

Malloy generally worked Monday through Friday, but CANS required her to be on-call some weekends. (Tr., pp. 15, 18) Malloy testified the on-call schedule varied, but she recalled being on-call as often as every third weekend to every sixth or seventh weekend, depending on how many registered nurses were working for CANS at a given time. (Tr., p. 18) When Malloy was on-call she would cover an area larger than the area she typically worked in Monday through Friday. (Tr., p. 18) CANS' area for on-call

service was typically split between the northern and southern portions of its service area. (Tr., pp. 18-19)

Malloy testified when she was initially hired she would start her on-call Saturday in the office, and if she did not see patients in the field she would stay in the office. (Tr., pp. 19, 58) Malloy reported CANS later modified the on-call policy for Saturdays, Sundays, and holidays, and she was paid from the time she left her home to visit patients until she returned to her home. (Tr., p. 19)

Malloy testified during her regular workweek, Monday through Friday, she would start receiving mileage when she arrived at the office or after her first patient's home. (Tr., p. 20) Malloy noted if her first patient of the day lived more than ten miles from her home, CANS would pay her for the mileage in excess of the ten miles. (Tr., pp. 20-21) When Malloy was on-call, she received mileage for all of her travel time. (Tr., pp. 21-22)

Malloy was injured on Tuesday, October 14, 2014. (Tr., p. 22) Malloy worked on October 13, 2014, and she had been on-call the weekend before. (Tr., pp. 22, 61-62, 140-41; Ex. 9, p. 6) Malloy arranged to take the morning of October 14, 2014 off to attend a personal medical appointment in Omaha. (Tr., pp. 22-23, 59, 129) October 14, 2014 was a busy day for CANS, so Malloy arranged to see her patients in the afternoon, so she could attend her appointment. (Tr., pp. 23-25) Given Malloy was on-call the weekend before, CANS allowed her to take back time from Sunday on Tuesday, October 14, 2014. (Tr., p. 141; Ex. 9, p. 12) CANS preferred that the nurses maintain a forty-hour work week, so the nurses were required to take time back or off during the week they were on-call. (Tr., pp. 114, 142) Tibben testified in her deposition Malloy "was limited to 40 hours a week, unless there was an unusual circumstance and we needed her to work more." (Ex. 9, p. 12)

Tibben covered part of Malloy's patient load the morning of October 14, 2014. (Tr., p. 129) Malloy was scheduled to see three patients in Walnut that afternoon. (Tr., p. 130) Tibben testified the patient known as "Louie" was not listed on the company screen as one of Malloy's patients that afternoon. (Tr., p. 131)

Malloy's mother, Holtz, drove Malloy to Omaha for her appointment. (Tr., pp. 26, 81; Ex. 2, p. 1) The morning of her appointment Malloy left her vehicle with the GPS unit at her mother's home. (Tr., p. 27) Malloy had driven her son's car because her husband had taken her vehicle to have new tires installed on it. (Tr., p. 27) Malloy lives approximately two miles from her mother. (Tr., p. 28) Malloy reported she loaded her purse, cellular telephone, notebook, and computer in her mother's car and they left for Omaha. (Tr., p. 28) Malloy and her mother left Omaha at approximately 11:30 a.m. (Tr., pp. 28, 81)

Malloy testified on her way back from Omaha she received a call from Linda Hansen, a health care aide for CANS about a patient, Louie. (Tr., pp. 28-29) Louie had a procedure scheduled the next day and he had questions about his urine. (Tr., pp. 29-30) Malloy spoke with Louie and told him that she would be coming to see him that day,

she would look at his urine, and if there were any signs or symptoms of infection she would contact his physician. (Tr., p. 30) During her visit with Louie on October 13, 2014, Malloy told Louie she had a personal medical appointment the next morning, and she would see him in the afternoon of October 14, 2014. (Tr., p. 70) Hansen did not provide Malloy with any new information concerning Louie. (Tr., p. 70) Malloy put a collection hat and specimen cup in her car for Louie on October 13, 2014. (Tr., p. 70)

Malloy reported during the trip back from Omaha she spoke with a nurse for Dr. Erlbacher in Harlan. (Tr., p. 31) During the telephone call Malloy spoke with the nurse about a patient and informed the nurse her mother needed a prescription refill. (Tr., pp. 31-32) Malloy also recalled she received text messages from Shelly Anderson, the secretary/office manager, about another patient she was scheduled to see in Shelby that afternoon. (Tr., p. 33)

Malloy did not stop for lunch after her appointment in Omaha because she needed to get to work. (Tr., pp. 34, 81; Ex. 2, p. 1) Malloy briefly stopped at her home on Umbrella Road to change into her uniform. (Tr., pp. 37, 82) Malloy returned to the car and she and her mother drove to her mother's home. (Tr., p. 37) Malloy's mother turned east or left on 400th Street and drove one-half mile on a gravel road to her home. (Tr., pp. 37-38; Ex. 16) Malloy moved her purse, cell phone, notebook, and laptop, into her vehicle and left her mother's home at approximately 12:30 p.m. (Tr., pp. 38-39) Malloy did not load any medical supplies for Louie into her vehicle because she had loaded the supplies the day before. (Tr., p. 40) Malloy testified during her return trip from Omaha she decided to stop by Louie's home in Walnut first, which was approximately seven miles from her home. (Tr., pp. 35, 58)

Malloy drove her vehicle west from her mother's home on 400th Street, again on gravel. (Tr., p. 40) Approximately half the distance back to Umbrella Road, or one-quarter of a mile away, Malloy was involved in a head-on collision. (Tr., pp. 42-43, 68) Malloy testified she had planned to take 400th Street to M47, a paved highway, to 100th Street on her way to Walnut, which was an alternate route from Umbrella Road to 100th Street. (Tr., pp. 42-44) Malloy testified she would have had to travel two and a half miles on the gravel road to get to M47, before heading south. (Tr., p. 44) Williams, the general manager of CANS, testified she believed that at the time of the collision Malloy was driving on her way to Walnut to see CANS' patients. (Tr., pp. 94, 100)

The accident report prepared at the scene document Malloy was driving on the wrong side of the road at the time of the collision. (Tr., p. 44; Ex. 1) Malloy was taken by Medivac from 400th Street to M47 and taken by Life Flight to the University of Nebraska Medical Center ("UNMC") for treatment. (Tr., p. 45) Malloy sustained a compound comminuted fracture of her left femur, a crushed right ankle, nine broken ribs, a nondisplaced fracture of T1, a lacerated liver, a lacerated spleen, and injuries to her colon, and she underwent multiple surgeries. (Tr., pp. 45-46, 48-49)

Malloy was hospitalized at the UNMC for ninety days, and then she was discharged to Audubon County Memorial Hospital for skilled care, where she received an additional month of treatment. (Tr., pp. 46-47) After she was discharged from

Audubon County Memorial Hospital, Malloy went to her mother's home to recuperate. (Tr., p. 47) Malloy stayed with her mother from February 2015 to June 2015, while she continued to receive medical treatment. (Tr., p. 48) At the time of the hearing Malloy was still receiving treatment from multiple physicians and taking pain medication. (Tr., pp. 49-52) Malloy has not returned to work since the accident. (Tr., p. 51) Malloy received six weeks of short-term disability payments at $50 per day, but she has not received any workers' compensation benefits or Social Security benefits to date. (Tr., p. 51)

Tibben testified within a few days of the accident, Tibben inspected Malloy's vehicle, which had been towed to Walnut. (Tr., pp. 134-35) Tibben found Malloy's laptop under the seat and some additional items. (Tr., p. 135) Tibben testified she went through the whole car with the towing service and they could not locate the GPS device. (Tr., pp. 134-35, 146; Ex. 9, pp. 34-35)

Malloy's husband testified the day before the accident he took the GPS unit out of Malloy's regular car, and placed it in their son's car into the universal port underneath the dash. (Tr., p. 88) He reported that in early November 2014 he went to the wrecking yard and inspected the vehicle to retrieve any belongings. (Tr., p. 90) Malloy's husband testified he removed the GPS unit, which was "laying on the dash" near the speedometer, which is not where he had put it on October 13, 2014. (Tr., pp. 90-91) Malloy's husband stated he took the GPS unit and returned it to the CANS' Elk Horn office. (Tr., p. 91) Tibben testified she did not know if the GPS device had been returned. (Tr., pp. 136, 150)

Tibben testified CANS was able to pull data from the GPS unit given to Malloy, which is shown in Exhibit B. (Tr., p. 144) Tibben noted that the GPS unit did not show that the unit had moved from Malloy's home on Umbrella Road from October 13, 2014, through October 19, 2014. (Tr., p. 157-58) Tibben acknowledged that if the GPS unit had not been completely plugged into a vehicle, then it would not accurately record the location. (Tr., pp. 145-46)

CANS and Cincinnati raised the issue of credibility. When assessing witness credibility, the trier of fact "may consider whether the testimony is reasonable and consistent with other evidence, whether a witness has made inconsistent statements, the witness's appearance, conduct, memory and knowledge of the facts, and the witness's interest in the [matter]." State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Ron Malloy and Tibben both have an interest in the outcome of this case, given Ron Malloy is married to Malloy, and Tibben works for CANS. I did not observe either of them engage in any furtive or other suspicious movements during the hearing. Ron Malloy's memory was clear, he maintained appropriate eye contact, and his rate of speech was normal. I also found Tibben's testimony to be consistent with her deposition and her speech and eye contact were appropriate. CANS and Cincinnati did not present evidence Ron Malloy had made other inconsistent statements, or present statements or testimony from the wrecking yard employee. Based on my observations and the evidence presented at hearing, I believe on October 13, 2014, Ron Malloy placed the GPS unit in the vehicle his wife drove on October 14, 2014, and that he

retrieved it from the wrecking yard in early November 2014. I also believe Tibben looked for the GPS unit, but she did not retrieve it. Tibben acknowledged she did not know if the GPS unit had been returned to CANS.

Malloy testified that on a normal day she would not receive mileage when she drove to her first patient in Walnut, but if she received a call from a physician's office and she spent fifteen minutes on the telephone with the physician and charted the information, then she would be eligible for mileage. (Tr., p. 73) Williams, the general manager of CANS, testified employees did not receive pay for charting completed at home. (Tr., pp. 93, 111-12) Tibben denied that employees were compensated for receiving calls from physician's offices before arriving at the first client of the day, or at the office. (Tr., pp. 127, 138)

Malloy reported that on the day of the accident she took her laptop with her and performed some charting while her mother was driving to and from Omaha. (Tr., pp. 73-75) Tibben testified Malloy's laptop was recovered after the accident. (Tr., p. 130) The screen was shattered, but CANS was able to upload charting from visits Malloy made on Monday, October 13, 2014, that had not been uploaded into the CANS' system. (Tr., p. 130) Tibben testified there was no charting or documentation recorded on Malloy's laptop for October 14, 2014. (Tr., pp. 130, 150) This also raises an issue of credibility.

Malloy did not engage in any furtive movements during the hearing. She maintained appropriate eye contact and a rate of speech. Malloy did not have a good recollection of the accident, due, in part, to the serious nature of her injuries. Malloy has a definite interest in the outcome of this case. I believe Malloy spoke with Hansen regarding Louie and with Dr. Erlbacher's office the day of the accident while she was traveling back from Omaha. Malloy did not specify what she was charting. Her mother did not testify she observed Malloy charting on the trip to and from Omaha. CANS was able to retrieve documentation from October 13, 2014, but there was no documentation from October 14, 2014. As discussed above I found Tibben credible. I do not find Malloy's testimony credible that she performed charting the day of the accident.

CONCLUSIONS OF LAW

To receive workers' compensation benefits, a claimant must establish by a preponderance of the evidence that the injury arose out of and in the course of the claimant's employment. Coffey v. Mid Seven Transp. Co., 831 N.W.2d 81, 93 (Iowa 2013); Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 253-54 (Iowa 2010). An injury "arises out of" the claimant's employment when a causal relationship exists between the claimant's employment and the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 129 (Iowa 1995). Thus, "the injury must be a 'rational consequence of the hazard connected with the employment.'" Id. "In the course of" the claimant's employment "refers to the time, place, and circumstances of the injury." Id. "An injury occurs in the course of employment when it is within the period of employment at a place where the employee reasonably may be engaged in doing something incidental thereto." Great Rivers Med. Ctr. v. Vickers, 753 N.W.2d 570, 574 (Iowa 2008).

As a general rule, "absent special circumstances, injuries occurring off the employer's premises while the employee is on the way to or from work are not [generally] compensable." Quaker Oats v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996). This is known as the "going and coming" rule. Id. There are several exceptions to the "going and coming" rule that "extend the employer's premises under certain circumstances when it would be unduly restrictive to limit coverage of compensation statutes to the physical perimeters of the employer's premises." Id. at 151.

In her post-hearing brief Malloy notes there are two primary exceptions to the "going and coming rule," the dual purpose exception and the special errand exception. Malloy concedes there is no evidence the dual purpose doctrine applies. She relies on the special errand exception and the employer's requirement that she provide a personal vehicle. CANS and Cincinnati aver Malloy had yet to commence the course of her employment at the time of the October 14, 2014 accident, and alternatively, that Malloy deviated from the route between her home and her first client for reasons personal to her.

I. SPECIAL ERRAND EXCEPTION

Under the special errand exception, an injury will be deemed to have arisen in the course of employment "if the employee is on a special errand or mission for his or her employer at the time of the injury." Ciha, 552 N.W.2d at 151. The court noted, in Ciha, that in Prybil v. Standard Elec. Co., 246 Iowa 333, 339, 67 N.W.2d 438, 442 (1954), an employee

> *[W]ould be pursuing his master's business* if his trip to and from the employer's premises were a special trip made in response to a special request, agreement or instructions to go from his home to the plant to do something for the employer's benefit. In that case it is clear the entire trip would be his master's business and by all authorities would be held to be in the course of the employment.

Id. at 151 (emphasis in original). The court further noted, that in Bulman v. Sanitary Farm Dairies, 247 Iowa 488, 494, 73 N.W.2d 27, 30 (1955), the court held

> [T]he going and coming rule is [not] dependent on the extent of the hazards of travel. It is based rather on contract, express or implied. If the employer assumes the burden of the workman's coming and going expense, that is held to imply that the *time* of coming and going is a part of the time of employment. Or *when the employer sends [the employee] on a special mission apart from his usual employment, the coming and going time of such mission is implied to be within the course of employment.*

Id. (emphasis in original). The court noted, in special errand exemption cases, the court asks "[w]hose business was [the employee] pursuing at the time of the injury?" Id. at 151-52.

Malloy contends she commenced her employment while she was traveling back from Omaha and received a telephone call regarding Louie. While Malloy received a message about Louie and his need for urinalysis, Malloy was aware Louie needed a urinalysis the day before her work injury. As discussed above, I did not find Malloy completed charting or other documentation while she was riding back from Omaha; she had not commenced her employment while traveling to and from her personal health appointment. Malloy has not established she was on a special errand at the time of her injury, apart from her usual employment. See Vickers, 753 N.W.2d at 577 (concluding "[t]here is simply no evidence from which the commissioner could have determined Great River required Reynolds to report to work *so that it could verify her illness*" and the situation "was not unlike any other day where an employee is expected to show up at work for her appointed shift").

II. PERSONAL VEHICLE EXCEPTION

The Iowa Supreme Court has recognized an exception to the "going and coming" rule when a claimant is required, as part of the claimant's employment, to provide a vehicle for use during the work day. Med. Assoc. Clinic, P.C. v. First Nat'l Bank of Dubuque, 440 N.W.2d 374, 375 (Iowa 1989); Davis v. Bjorenson, 229 Iowa 7, 293 N.W. 829, 831 (1940).

In Davis, the claimant worked as a mechanic for a business. Claimant's employment agreement required the claimant to regularly furnish a vehicle to his employer for use in the business as a service car. 293 N.W. at 829. The claimant took the vehicle at home at night and answered emergency service calls overnight. Id. During regular business hours, the claimant's vehicle was used in the business by the claimant and by other employees, and the employer furnished gas and oil for the vehicle. Id. The claimant was injured while driving his vehicle twelve blocks from his home on the way to his employer early in the morning. Id. at 829. The court found the claimant's injury arose out of and in the course of his employment because the vehicle was an instrumentality of the business given the claimant was required under his contract to drive his own vehicle from his home to the shop where it was available to his employer for use in his employer's business. Id. at 830.

In Medical Associates Clinic, P.C., Miles Martin, a thoracic surgeon, was killed in an automobile accident on his way from home to work at Mercy Hospital in Dubuque. 440 N.W.2d at 374. Dr. Martin had an employment contract with Medical Associates Clinic, which required him to personally pay automobile and transportation expenses he incurred in his work as a physician, and which provided his employer was under no obligation to pay the expenses. Id. at 374-75. Medical Associates Clinic argued the Davis case was distinguishable because Davis was required by contract to provide a vehicle, it was used by all of the employees to make service calls, and the employer furnished the gas and oil for the vehicle. Id. at 376. The court disagreed, concluding the employer read the Davis case too narrowly, noting, "[w]hat was significant was that claimant was required to bring the vehicle to work for its use in the business to make service calls. As a result, 'claimant had no selection of his mode of travel to work.'" Id.

The court found Dr. Martin was required to bring his vehicle to work, he had no fixed hours or work situs and instead made frequent trips between the Medical Associates office and several area hospitals, and he was required to be on call, making it incumbent upon him to have ready transportation. Id. The court found Dr. Martin's death arose out of an in the course of his employment because he was required to bring his vehicle to work for its use in furtherance of Medical Associates' practice. Id.

CANS and Cincinnati have tried to distinguish this case from Dr. Martin's case because Dr. Martin was on-call at the time of his accident. The analysis portion of the case does not focus on the fact he was on-call at the time of the accident, but rather, the requirement that he "often be on call." Id. at 376.

Malloy did not have fixed hours and she made frequent trips to CANS' patients living in the Walnut geographic area outside of the Elk Horn office, after departing from her residence. CANS exercised additional control over Malloy's vehicle by requiring Malloy to install a GPS device in her vehicle to keep track of her mileage. CANS also required Malloy to be on-call regularly, making it incumbent upon her to have ready transportation. CANS obtained a substantial benefit from Malloy's mobility and she was required to bring her vehicle to work for its use in furtherance of CANS' business. Malloy was using the car at the time of the accident to drive to her first patient in Walnut. Based on the foregoing, Malloy's injury on her way to work arose out of and in the course of her employment with CANS under the personal vehicle exception.

III. DEVIATION

Alternatively, CANS and Cincinnati contend Malloy deviated from her trip from her home to see her patients in Walnut to such an extent that she abandoned her employment at the time of the accident, relying on Pohler v. T.W. Snow Constr. Co., 239 Iowa 1018, 33 N.W.2d 416 (1948), and Volk v. Int'l Harvester Co., 252 Iowa 298, 106 N.W.2d 649 (1960). Malloy avers she was within the course of her employment at the time of the accident and rejects the notion that she abandoned her employment.

In Pohler, the employer provided a bunk car for a crew of men, including Pohler, the supervisor. Id. at 1020, 417. On the date of Pohler's death, the crew was forced to stop work because water was seeping into the area they were excavating. Id. at 1020, 417-18. Pohler determined he needed to obtain a pump and hose to remove the water. Id. 1020, 418. After eating supper in the bunk car, Pohler and two of his coworkers walked to a town to speak to a man to arrange for the use of his pump and hose the following day. Id. After speaking with the man, Pohler walked a block north to a hotel to telephone his wife and his coworkers returned to the bunk car. Id. Pohler attempted to call his wife without success for two hours and left to return to the bunk car. Id. Pohler was run over by a train and died. Id.

The employer argued Pohler was not killed in the course of his employment because he had deviated from and abandoned his special mission when he went to the hotel to call his wife. Id. at 1022, 418. The court held Pohler was in the course of his

employment when he was killed because the principal reason for his trip was the special errand to arrange for the pump for his employer, noting,

> Like the trial court, we cannot accede to appellee's contention that placing the phone call and the two hours wait were, as a matter of law, an abandonment of Pohler's employment which could not be resumed until regular working hours the next day. That they constituted a deviation therefrom may be conceded. And if injury had resulted between the time Pohler started to walk a block or two north to the hotel and the time he returned to such point after placing the phone call it may be conceded without deciding such injury would not have arisen in the course of employment. But when Pohler in returning to the bunk car reached the place where he had turned aside from his employment to go to the hotel the deviation was ended and he resumed his employment. There was a substantial interval of both time and distance after such resumption before Pohler was injured on the direct route back to the bunk car.
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> Pohler was serving his employer as fully in returning to the bunk car following his interview with Hettle after placing the phone call as if he had returned without so doing or as if he had lived to resume his regular work the following day. So far as appears, it was wholly immaterial to the employer that the trip back to the bunk car was delayed by the attempted phone call. Pohler's deviation from his employment does not differ essentially from that of his two co-workers in going to a restaurant and eating a light lunch before starting to return to the bunk car.

Id. at 1023-24, 419.

In Volk, the claimant, a parts zone supervisor, ended his formal duties with his employer at 5:00 p.m. and registered in a hotel in Washington, which was to provide a meeting for the employees. 252 Iowa at 299, 106 N.W.2d at 649. The meeting was not held. Id. Volk and another employee went to the home of a third employee, Archer, in Washington and drank martinis. Id. at 300, 649. After drinking the martinis they went to the Epicurean Club located between Washington and Ainsworth where they consumed alcoholic beverages, played game of bowling, and ate dinner. Id. at 300, 649-50. After dinner, the men drove to Muscatine, visited three taverns and consumed beer. Id. at 300, 650. The men drove back toward Washington and were involved in a car accident after they had passed the Epicurean Club. Id. Volk died in the accident. Id. While Volk's employer furnished his food, lodging, and travel expenses while he was away from home, the court found Volk was not in the course of his employment at the time of the accident because the trip to Muscatine was a deviation or departure from his employment, and when he reached the Epicurean Club on the return trip he did not resume any activity or duty connected with his employment. Id. at 305, 652.

Exhibit 16 sets forth the route Malloy took on the date of the accident. Before her appointment, Malloy drove a short distance to her mother's home and dropped off her vehicle before leaving with her mother for Omaha. Malloy returned to her mother's

home after changing into her uniform and left in her vehicle toward her first patient in Walnut. Malloy was headed a short distance on a gravel road in the direction of a paved highway. At that time she was involved in an accident. The undisputed evidence supports Malloy took a longer route to Walnut than she would have taken from her home because her mother lives two miles to the north. (Tr., p. 28)

Malloy's trip to Omaha with her mother was for a personal medical appointment unrelated to her work for CANS. Malloy had left her work vehicle at her mother's home. When she returned to her mother's home, Malloy entered her own vehicle and began driving toward her first CANS' patient in Walnut. I conclude under Volk, Malloy had resumed an activity or duty connected with her employment when she began driving toward her patient's home.

In a more recent case, Ciha, a supervisor for Quaker Oaks, was injured in a motorcycle accident while he was taking a more scenic, less direct, and longer route to his home from his employer. Ciha, 552 N.W.2d at 147. Ciha's normal route was approximately four and a half miles from the plant, and the alternate route was approximately nine miles. Id. The commissioner found Ciha did not deviate from his special errand, concluding:

> [Ciha] testified that he often took [the Ellis road] route home because it was more scenic, it had less traffic, it had fewer stop lights, and the actual difference in miles between this route and the more direct route was minimal. [Ciha's] call to his wife from the plant to start the grill for their meal shows that his purpose was to return home, and that he had no other destination other than to return to his residence. The record does not show a deviation from the course of employment.

Id. at 153. The court found the commissioner's findings were supported by substantial evidence that there was no dual purpose of the trip or substantial deviation from or abandonment of the employment at the time Ciha was injured. Id. at 154.

While the route from Malloy's mother's home to the paved highway was longer than the route from her own home, Malloy had no other destination other than the home of the CANS' patient in Walnut. The record does not support Malloy deviated from the course of employment to such an extent that she abandoned her employment at the time of the accident.

IV. COSTS

Malloy seeks to recover the $100.00 filing fee, the $713.00 cost of the deposition transcripts of Malloy, Williams, Tibben, Hansen, and Anderson. Rule 876 IAC 4.33 outlines the costs that can be taxed, as follows,

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2)

> transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The rule expressly allows for the recovery of the filing fee and the deposition transcript. $813.00 is taxed to CANS and Cincinnati.

ORDER

IT IS THEREFORE ORDERED, that:

CANS and Cincinnati shall pay Malloy a running award of healing period benefits from October 14, 2014, at the rate of six hundred thirty-nine and 89/100 dollars ($639.89), until such time as the healing period terminates under Iowa Code section 85.34(1).

CANS and Cincinnati shall reimburse Malloy one hundred and 00/100 dollars ($100.00) for the filing fee, and seven hundred thirteen and 00/100 dollars ($713.00) for the deposition transcripts of Malloy, Williams, Tibben, Hansen, and Anderson.

CANS and Cincinnati shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 1st day of February, 2017.

HEATHER L. PALMER
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.