GOING & COMING RULE

WHERE HAVE WE BEEN, WHERE ARE WE NOW AND WHERE ARE WE HEADING?

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I. RHODE ISLAND CASE LAW & THE HISTORY OF THE RULE

• Toolin v. Aquidneck Island Medical Resource, 668 A.2d 639 (R.I. 1995)
  o “The [going and coming] rule operates to preclude compensation when injury occurs while an employee is traveling to or from the workplace.” Id. at 640
  o The Court reiterated the principle that an employee will be denied compensation for injuries occurring while the employee is “on the employer’s premises before commencement or after completion of the employee’s shift.” Id. (citing Lima v. William H. Haskell Manufacturing Co., 100 R.I. 312, 215 A.2d 229 (1965)).
  o “Because of the harshness of the [going and coming] rule, this court has been willing to delineate exceptions to its application that depend on the particular circumstances of each case. Thus, we have held that an employee is entitled to compensation benefits if it can be demonstrated that a nexus of causal connection exists between the injury sustained and the employment.” Id. at 640-41

• DiLibero v. Middlesex Construction Co., 63 R.I. 509, 9 A.2d 848 (1939)
  o Three criteria in determining compensability:
    1. Whether the injury occurred within a period of the employee’s employment
    2. The situs of the injury – did the injury occur at a place where the employee might reasonably have been expected to be
    3. Whether the employee, at the time of injury, was reasonably fulfilling the duties of his/her job or was performing some task incidental to those duties or to the conditions under which those duties were to be performed.
  o The Court emphasized that the employee in this case was going home, without deviation, along the only available route by which he could leave the premises.

• Kenyon Robertson v. Cardi Corporation, WCC 02-08219
  o “The Court’s expansion of the ‘period of employment’ beyond the normal work hours has generally occurred in circumstances where the employee is still on the employer’s premises or in an area that the employer controls or has directed the employee to travel through.”
- Employee worked for Leviton on Jefferson Blvd.; worked 7:30am – 4:00pm every day
- Employee drove his own car and parked it in a company owned and company controlled lot across the street from the plant on the opposite side of Jefferson Blvd. Employee was specifically directed to park in said lot.
- Employee was struck by a car as he was crossing Jefferson Blvd. trying to get into work
- Trial Judge applied DiLibero test and found nexus between injury and employment and awarded the employee benefits
- RI Supreme Court agreed with trial judge and found injury compensable
- Even though injuries occurred at 7:20am, ten minutes before his work day started, they found that the injuries occurred “within his employment period.”
- The court stated that “this court has recognized that the period of employment includes a reasonable period of time both prior and subsequent to the employee’s normal hours of work.”
- The Supreme Court also found that the injury occurred at a place where the ER could reasonably expect the employee to be at the time.
- Court went on to say: “We shall extend an exception to the going and coming rule in situations in which: (1) the employer owns and maintains an employee parking area separate from its facility grounds, (2) the employer takes affirmative action to control the route of the employee by directing the employee to park in that separate area, and (3) the employee is injured while traveling directly from the lot to the plant facility.”
- “Because employer placed employee in the position of having to cross Jefferson Blvd. daily to get to work and back to his car, this crossing may be considered a condition incident to his employment.”

- An employee’s right to relief does not always hinge on whether he or she was injured on the employer’s premises.

- “The question of control over the place of injury, rather than being conclusive, is only one of the factors to be considered on the issue of compensability.”

- If the injury results from a risk involved in the employment or incident thereto or to the conditions under which it is required to be performed, then it is said to “arise out of” the employment.

Gerald Desmaris v. Diamond Hill Nursing Home – Appellate Decision – 1995
- Appellate Div. found that the requirement that an employee navigate stairs in order to enter his work facility was not a dangerous obstacle that would bring injuries sustained while navigating such stairs within the employee’s course of employment; Court distinguished these facts from “dangerous” condition in Branco
- **Pasquilian Iafrate v. RI Temp – Appellate Decision – 1996**
  - Employee fell 4 feet from the entrance of her workplace.
  - She fell in a parking lot adjacent to the building. The lot was not owned by her employer.
  - Appellate Division found injuries not compensable – the fact that the employee’s injuries were sustained while only four feet from her place of employment does not make them compensable – the court does not look to the proximity of or the location of where the employee’s injury occurred to the work site.
  - Instead, the Court inquires whether the employee, at the time of her injury, was reasonably fulfilling the duties of her job or was performing some task incidental to those duties or the conditions under which those duties were to be performed.

  - Employee had just reached the doorway and had grasped the doorknob in her hand and started to push the door open when she slipped and fell to the sidewalk.
  - “The precise issue presented to us for decision relates to the compensability of an employee’s incapacity resulting from an injury sustained by such employee while traveling on a public way in order to reach his place of employment.”
  - Employee’s injury found incompensable because she failed to prove that her injury and fall bore some relationship to her employment.

  - Employee fell while approaching the door to her workplace; she worked as a receptionist and sat in the front of the building at her desk and answered the phones.
  - She parked her car in a lot at the side of the building; not separate from the building.
  - She has a designated parking space; got out of her car and walked straight to the designated employee’s entrance; employees were not allowed to use the front door.
  - Approached the employee’s entrance and fell on ice.
  - The employer owns, controls and manages the walkway in question; she was on ER’s premises when she fell.
  - Employee won at trial level; employer appealed and appellate court overturned trial judge.
  - Supreme Court reversed the final decree of the Appellate Division.
  - “We are persuaded that her injuries occurred within a reasonable time before her work began; hence we are of the opinion that her injuries arose within the period of her employment.”
  - “[W]e are persuaded that Rico’s injuries occurred at a place where All Phase could reasonably expect her to be at 7:50am.”
  - Three main factors that persuaded the Court that Rico’s injuries were compensable:
    - The parking lot was owned and maintained by All Phase.
    - All Phase controlled Rico’s route by directing her to park in a designated space in the employees’ parking lot and to enter through the employees’ entrance.
    - Rico was injured while walking directly from the employees’ parking lot to the employees’ entrance of the employer’s building.

  - Employee suffered an injury in January 2005. He was employed as a road technician and was responsible for traveling to various Bank of America locations in a company-owned cargo van.
  - Employee referred to said van as “his office” and testified that he was on call 24/7, 365, although his normal hours were 8:00am – 4:30pm.
  - Employee normally drove the van back to his apartment in Smithfield, RI so he could respond to emergency calls outside of his normal working hours.
  - It snowed overnight the night before employee’s injury. He left his apartment at 7:30am and cleared the snow off of the van in the parking lot of his apartment complex. He had not received
any specific work orders that day, and therefore planned to drive to a central location in Providence to await calls.

- As he was leaving the parking lot at 8:05am, his van became blocked-in by another vehicle stuck in the snow. He exited the van to assist the other motorist. He pushed up against the other vehicle and lifted the bumper, injuring his back.
- Employer had a policy of not paying their employees for the first 30 minutes of commuting time. The employer had a “Good Samaritan” policy in place.
- The trial judge found the employee’s injuries to be non-compensable as they were barred by the going and coming rule; the Appellate Division affirmed the trial judge’s decision.
- The employee argued that the Appellate Division erred as a matter of law in determining that he was not in the course of his employment at the time of injury and that it “failed to take into account the circumstances and duties of [the employee’s] employment and apply them to the specific facts of [the employee’s] efforts as a ‘Good Samaritan’ in the context of the ‘coming and going’ rule.”
- The Rhode Island Supreme Court held that the Appellate Division erred as a matter of law in failing to find a nexus between employee’s injuries and his employment.
- “In light of the peculiar circumstances of [employee’s] employment, however, we do not consider the fact that he had not yet entered the public highways to be dispositive.”
- Court used the three-part DiLibero criteria/test to determine that the circumstances of employee’s injury must be considered incidental to his job duties.
- Court emphasized that it was not adopting a “portal-to-portal” rule of compensation.

II. LARSON ON THE GOING & COMING RULE

- With regard to “employees having fixed hours and place of work, injuries occurring on the [employer’s] premises while they are going to and from work before or after working hours or at lunchtime are compensable, but if the injury occurs off the premises, it is not compensable, subject to several exceptions.” 1 A. Larson, The Law of Workmen’s Compensation, § 15.00 (1995).
- There is an important rationale in this rule “in that, while the employee is on the employer’s premises, the connection with the employment environment is physical and tangible.” Id., 15.12(a) at 4-11.

III. FACTORS TO CONSIDER – CASE BY CASE ANALYSIS

- Does employer own or maintain the premises where the injury occurred?
- Is the employee injured in a company owned vehicle?
- Is the employee traveling with work tools when the injury occurs?
- Was the employee directed to travel to a certain place? At a certain time?
- Does the employer control the employee’s route?
- Did the employee “clock in” or travel to a work location before traveling?
- Did the employer create dangerous conditions or obstacles incident to employment?
- Is the employee compensated for mileage, travel time, expenses?
- Does the employee have a fixed place of work? Or is the employee dispatched?
- Was employee in a place that employer could reasonably expect her/him to be?
- Did employee have standard hours or was employee “on call”? 
IV. TRENDS NATIONALLY & COMPARING RI TO OTHER JURISDICTIONS

- NATIONAL TRENDS
  - California – June, 2017
    - Court of Appeal in CA recently held that an in-home caretaker had compensable injuries
    - She rode her bike from home to home throughout the day, and was struck by a motor vehicle as she rode her bike from one patient’s home to her next in-home appt.
    - Court found that even though she chose her own transportation and was not compensated for travel time, her injuries were compensable
  - California – April, 2017
    - A workers’ compensation judge in California approved a record-breaking $10 million settlement in a WC case
    - TBC v. Ernst & Young; The Insurance Co. of the State of Pennsylvania (AIG)
    - Employee was driving home at approximately, 2:30am on June 5, 2013 from a special audit for work when she hit a tree after veering off the Interstate
    - Employee sustained a traumatic brain injury
    - Case was filed and accepted as a workers’ compensation claim under the “special circumstances” exception to the going and coming rule because the employee was driving home from a work assignment in special circumstances at 2:30am, during abnormal commuting hours
  - Delaware – April 2013
    - Supreme Court of Delaware affirmed the denial of a petition for workers’ compensation benefits filed by a home health aide who was injured in a motor vehicle collision after she completed her services at a client’s home.
    - Spellman v. Christiana Care Health Serv., 2013 De. LEXIS 183 (April 8, 2013)

- MASSACHUSETTS
  - In re Kelbe’s Case - 2015
    - The Appeals Court of Massachusetts presented a decision that summarizes the going and coming rule and its exceptions
    - The general rule is that workers’ compensation is not available to compensate employees who are injured during the course of travel to and from work
    - However, injuries that occur on the employer’s premises are compensable, as are injuries that occur where the employer owns the right of passage, such as a parking garage.
    - Other exceptions include when employee’s job duties include travel away from employer’s premises, or when the vehicle is provided by employer for employee’s travel
    - In this case, MIT employee signed out of work and was driving home when the accident occurred.
    - Employee argued that his injuries were compensable because MIT owned buildings on both sides of the street, MIT often cleared the snow that accumulated in that area during the winter, and MIT police patrolled the area – attempting to argue that MIT had control over the area where the injury occurred
    - Administrative judge found the going and coming rule to bar recovery for employee
    - The Appeals Court of MA agreed with the administrative Judge
• **LONGSHORE AND HARBOR WORKERS COMPENSATION ACT**
  o **West v. Navy Exchange Command**, BRB No. 03-0636.
    - In *West*, the claimant was a fabric worker at a Navy Exchange Facility. She was required to have an ID badge to enter Naval property. She parked in a lot adjacent to her work place. Claimant had a parking decal which allowed her to park in the lot in which she was parked. The claimant arrived at work, but had not clocked-in to work yet, when she tripped on some debris in the parking lot and fell, injuring her knee.
    - The only issue in *West* was whether the “coming and going” rule applied to bar the claimant from receiving benefits. The ALJ found that the parking lot where claimant was injured “was sufficiently connected” to the employer’s work facilities, and thus, found the parking lot to be a part of the employer’s premises. The ALJ found that even though the employer in *West* did not own the parking lot, that they exercised control over the area, and thus, the claimant established an exception to the “coming and going” rule.
    - In *West*, the employer appealed the ALJ’s decision to the Benefits Review Board. The Board discussed the coming and going rule as follows:
      - “Generally, injuries sustained by employees on their way to or from work are not compensable, as traveling to and from work is not within the scope of the employee’s employment….However, an employee is allowed a reasonable time before and after work to enter and exit the employer’s premises; injuries occurring on the premises during this time arise within the scope of employment, and the ‘coming and going’ rule does not apply.” *West*, BRB No. 03-0636.

V. **HYPOTHETICAL FACT PATTERNS & ANTICIPATING THE FUTURE OF THE RULE**