

RENDERED: FEBRUARY 3, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000557-WC

CUMBERLAND RIVER COMPREHENSIVE CARE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-09-01491

DEIDRE HACKER, DECEASED;
JULIUS HACKER, ADMINISTRATOR;
HON. JEANIE OWEN MILLER, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION BOARD APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Cumberland River Comprehensive Care appeals the decision of the Kentucky's Workers' Compensation Board upholding the Administrative Law Judge's (ALJ) award to Deidre Hacker who is deceased. For the reason stated herein, we affirm.

At 12:20 p.m., on August 25, 2009, Hacker, a case manager at Cumberland, was tragically involved in a fatal automobile accident. Thereafter, Julius Hacker, Hacker's husband and the administrator of her estate, filed a claim for workers' compensation benefits alleging that Hacker died from a work-related car accident. Cumberland filed a response alleging that Hacker's automobile accident did not arise out of and was not in the course of her employment because the accident occurred during Hacker's lunch break. Subsequently, an ALJ held a hearing where she heard testimony and accepted evidence by deposition.

At the hearing, Brenda Rader, Hacker's Team Leader at Cumberland, testified that Hacker's duties required her to travel to clients' homes to assist them in keeping their doctor's appointments, making sure they were properly taking medications, and transporting them to the grocery store and to run errands. Rader testified that Hacker drove some clients from the office to the food stamp office for income verification and returned them to the office. She testified that Hacker did not carry any clients with her when she left the office for the last time.

Rader further testified that Hacker's work schedule was flexible and that she could schedule and take her lunch breaks when and where she needed. She testified that Hacker usually carried her work bag, which contained forms that her clients were required to sign, when she left the office to assist off-site clients. Rader testified that Hacker did not take her work bag when she left the office.

Julius testified that Hacker occasionally began work days by visiting some of her clients before arriving at her office. He testified that Hacker's

schedule was largely based on the best times to meet her clients at their homes, which often required her to take her lunch breaks at various times during the day. He testified that he called Hacker at her office between 10:30 and 11:00 a.m., on August 25, 2009, and was informed by his wife that she had eaten lunch. He testified that Hacker informed him that she was going to visit a client but that she would bring him lunch on her way back if she had time. He further testified that he did not actually know where Hacker was going at the time of her crash.

Ruby Reed, a receptionist at Cumberland, testified that she worked with Hacker for six years. Reed testified that she observed Hacker leave the office and heard her say that she was going to lunch and would return to the office. She further testified that Hacker usually carried her work bag when visiting clients but that she did not take her work bag when she left the office.

Christine Gregory, who worked in the medical records department at Cumberland, testified Hacker informed her and Reed as she left that Hacker was going to cash a check, get lunch, and would return to the office. Gregory testified that the day in question was payroll day and that was why Hacker was going to the bank. She testified that Hacker left the office between 11:30 a.m. and 12:30 p.m. However, she testified that it was possible that Hacker may have had to see a client after she left the office and that she had no reason to dispute Julius's testimony.

Darlene Roberts, Hacker's mother, testified that she spoke with Hacker by telephone during the morning of the day of the accident. She testified that she had no knowledge as to whether Hacker was going on a home visit, to her

residence, or to lunch. However, Roberts testified that some of Hacker's co-workers, including Rader and Linda Farmer, visited Hacker's residence following the accident and spoke with her. She testified that she was informed by Hacker's co-workers that Hacker left work to drive to the bank and then had to make a home visit with a client around the approximate time of the accident.

Farmer, a Hacker family friend, testified that she was present at Hacker's residence during a discussion among Roberts and Hacker's co-workers. She testified that Hacker's co-workers indicated that Hacker went to the bank to cash her paycheck and then intended to stop by the home of a client. Farmer further testified that Hacker's co-workers made various other statements that led her to believe that the co-workers did not know Hacker's intended destination.

Pam McGeorge, a team leader and licensed clinical social worker at Cumberland, testified that Hacker worked with clients with severe mental illnesses. McGeorge testified that Hacker was required to meet with clients at their homes and transport them to the doctor and other places. She testified that Hacker would commonly deposit checks or get lunch while driving to work assignments.

In the record, a bank deposit slip and paycheck were admitted indicating that Hacker did complete a transaction at National City Bank on the day in question.

At the conclusion of the hearing, the ALJ found that Hacker was providing service to her employer at the time of her fatal accident. The ALJ specifically noted Julius's testimony that Hacker informed him by telephone just

before her fatal accident that she was going to the bank and then to visit a client. Subsequently, Cumberland appealed to the Board, which upheld the ALJ's ruling.

Cumberland contends that the Board erred by finding that Hacker's death arose out of and occurred in the course of her employment. Specifically, Cumberland argues that the Board erroneously found that Hacker's travel provided a service or benefit to it. Rather, Cumberland contends that Hacker's travel at the time of her accident was of a personal nature and was not work-related. Thus, Cumberland argues that the Board's award to Hacker must be reversed.

When reviewing the ALJ's findings of fact, we are required to provide these findings considerable deference and cannot set them aside unless evidence compels a contrary finding. *Mosely v. Ford Motor Co.*, 968 S.W.2d 675, 678 (Ky.App. 1998). If an ALJ's findings of fact are supported by substantial evidence, a contrary finding against the ALJ's findings cannot be sustained. *AK Steel Corp. v. Adkins*, 253 S.W.3d 59, 64 (Ky. 2008). We review the Board's application of law *de novo* and, thus, provide no deference to its application of the law. *Newberg v. Thomas Industries*, 852 S.W.2d 339, 340 (Ky.App. 1993).

KRS 342.0011(1) provides that a compensable injury must arise out of and be in the course of employment. *White v. Great Clips*, 259 S.W.3d 501, 504 (Ky.App. 2008). "An injury occurs in the course of an employment if it takes place during the employment, at a place where the employee may reasonably be, and while the employee is working or otherwise serving the employer's interests." *Clark County Bd. of Educ. v. Jacobs*, 278 S.W.3d 140, 143 (Ky. 2009). However,

an injury sustained during a personal mission is generally deemed as being outside the course of the employment and, thus, not compensable. *Meredith v. Jefferson County Property Valuation Administrator*, 19 S.W.3d 106, 108 (Ky. 2000).

In this case, Hacker's husband testified that Hacker informed him, shortly before her accident, that she was going to the bank and then to visit a client. A bank deposit slip was entered into the record showing that Hacker had completed her trip to the bank. Hacker's co-workers testified that Hacker's job entailed visiting the homes of her clients and transporting them to appointments. While Hacker left the office without her work bag, which she normally carried with her when she visited clients, Hacker's co-workers testified that she had great latitude in her job and often made spontaneous visits to the homes of her clients. These home visits occurred at various times during the day, including at midday.

Although Cumberland contends that Hacker's statement that she was going to lunch and the bank and her leaving her work bag proves that she was engaged on a personal mission when she left the office, we conclude that the Board's finding that Hacker's accident was work-related because she was serving her employer's interests was proper. While Cumberland disbelieves Hacker's husband's testimony that she was going to visit a client near the time of the accident, the ALJ, as finder of fact, has "the authority to determine the quality, character and substance of the evidence" presented and not a reviewing court. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). Based on

the evidence, we conclude that the ALJ's decision was supported by substantial evidence.

Cumberland contends that the Board erred by upholding the ALJ's decision on a legal theory not discussed before or mentioned by the ALJ. It argues that the ALJ's ruling was based on a finding that Hacker's travel provided a service to Cumberland but that the Board decided the case under the "dual purpose" theory, which was not litigated when the parties were before the ALJ. Cumberland contends that the Board's use of this new legal theory was erroneous.

After reviewing the Board's opinion, we disagree with Cumberland's characterization that the Board applied a new theory in upholding the ALJ's ruling. The Board merely discussed the fact that the evidence contained in the record indicated that Hacker was on a dual purpose mission when she left her office. She was going to the bank, which the Board noted was a "personal errand," and then she was going to visit the home of a client, which the Board noted was "a service for [her] employer." However, the Board observed that the ALJ acted reasonably in finding that the bank deposit slip established that Hacker's personal trip had ended, leaving only her business trip to a client's home for her employer. Thus, the Board solely relied on the service to employer legal theory as found by the ALJ.

For the foregoing reasons, the opinion of the Kentucky Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Herald, III
Pikeville, Kentucky

BRIEF FOR APPELLEES:

Kenneth A. Buckle
Hyden, Kentucky