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# Commonwealth of Kentucky

# Court of Appeals

NO. 2010-CA-000663-WC

GAINES GENTRY THOROUGHBREDS/
FAYETTE FARMS — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-00589

ADAN MANDUJANO;
HON. EDWARD HAYS,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON AND COMBS, JUDGES; LAMBERT,[1] SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Gaines Gentry Thoroughbreds/Fayette Farms (Gaines Gentry) petitions for review of a decision of the Workers' Compensation

[1] Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Board. The Board affirmed an Administrative Law Judge's determination that Adan Mandujano sustained compensable work-related injuries in an automobile accident during the course of his employment with Gaines Gentry. Gaines Gentry challenges the conclusion of the ALJ and the Board that Mandujano's injuries occurred during the course and scope of his employment. For reasons that follow, we affirm.

**Summary of Testimony**

On August 12, 2007, Mandujano was involved in a motor-vehicle accident while traveling from New York to Kentucky. As a result of the accident, Mandujano sustained skull fractures as well as cervical and lumbar injuries. He subsequently underwent surgery to address the skull fractures and also required extensive dental work. The ALJ ultimately determined that Mandujano had a 10% impairment, or 5% each for the lumbar and cervical injuries. Because the sole issue on appeal involves whether Mandujano was injured during the course and scope of his employment, we limit our discussion of the facts to those relating to that issue. The evidence regarding whether Mandujano was injured during the course and scope of his employment with Gaines Gentry was developed during deposition and hearing testimony from three individuals: (1) Mandujano; (2) John Hayes, the general manager for Gaines Gentry; and (3) J. Reiley McDonald, a managing member with Eaton Sales.

Adan Mandujano: Mandujano provided testimony in depositions given on June 30, 2008, and April 17, 2000, and testified live at a hearing. On all

three occasions, he required the aid of an interpreter. At the time of the events relevant to this appeal, Mandujano was a 24-year-old male who had lived in this country for nine years. Mandujano began working for Gaines Gentry, a horse farm, in 2005 as a groom. While employed by Gaines Gentry, Mandujano also showed horses for Eaton Sales, a consignment seller, and received compensation for such work. On August 2, 2007, Eaton, acting as Gaines Gentry's sales agent, transported approximately five or six of Gaines Gentry's yearlings to a sale in Saratoga, New York via a van rented from Sallee Vans. Mandujano traveled in the van with the horses to Saratoga.

Mandujano indicated that John Hayes, Gaines Gentry's general manager, told him to ride in the van with the horses to Saratoga. According to Mandujano, Hayes told him it was important that Mandujano work for Eaton and show the horses at the sale because the horses belonged to Olin Gentry – an owner of Gaines Gentry – and were "special horses." At the hearing, Mandujano testified that he initially asked Hayes's assistant if he could take time off to work the sales in Saratoga and another sale in Florida. Working at those sales paid more money per day than his work at the horse farm. The assistant told him he could go to the Saratoga sales but not to the Florida sales. Mandujano wanted to travel to Saratoga in his truck, but Hayes told him it would be better if he rode in the van with the horses to take care of them instead. Mandujano agreed, and Gaines Gentry paid him $200.00 for the trip. Mandujano testified that he had worked outside of Kentucky at other sales, and on those occasions he normally drove his truck to the

sale. However, according to Mandujano, neither Gaines Gentry nor Eaton offered to provide or to pay for a ride back to Kentucky after the Saratoga sales. As a result, he had to make his own arrangements to find a ride home. Mandujano did acknowledge, however, that he could have ridden back in the Sallee van that brought the horses to the sales. Mandujano further testified that he was expected to return to work at Gaines Gentry after the sales ended.

At the beginning of the Saratoga sales, Mandujano worked for Eaton showing Gaines Gentry's horses, including Olin Gentry's horses. As a showman, his job was to clean and show the horses to the buyers. Mandujano testified that it took special skills, which develop over time, to show horses to the buyers. He further testified that he did not speak to anyone at Eaton about what he would be doing at the sales because Hayes had told him what he was to do.[2] Mandujano testified that Eaton paid him an extra $250.00 for the trip and that he worked approximately three to four days for Eaton and was paid $200.00 per day plus extra for each night.

Mandujano indicated that when the first sale ended on August 7, 2007, his work for Eaton ended. He subsequently found work showing horses for Paramount Sales at a sale for "lesser" horses. Mandujano testified in his deposition that he did not have a prearranged agreement with Paramount to work for them in Saratoga because he did not know there were more sales after the first

[2] In another deposition, Mandujano testified, in contradictory fashion, that Hayes sent Mandujano to talk to Oliver Brown at Eaton, who told him what to do while working for Eaton at Saratoga.

sale. However, he believed Paramount knew him and would use him at Saratoga. Mandujano's testimony at the hearing was somewhat contradictory on this point and suggested that he knew beforehand that he would be working for Paramount following his work for Eaton. In any event, Mandujano apparently had permission from Hayes to stay in Saratoga until the end of the sales; so he worked approximately three to four days for Paramount and was paid $200.00 per day.

Once his work for Paramount – and the sales – ended, Mandujano was able to get a ride back to Kentucky with a friend. Mandujano was a passenger in the friend's truck when the subject motor vehicle accident occurred, and he suffered multiple injuries as a result. Following his recovery, Mandujano returned to work at Gaines Gentry in October and has remained in its employ.

John Hayes: Hayes, general manager for Gaines Gentry, was deposed on November 25, 2008, and testified at the hearing. Hayes testified that Mandujano asked if he could take off work to go to the Saratoga sales. Hayes equated the situation to Mandujano taking a leave of absence to work the sales. Hayes testified that he knew Mandujano needed a ride to Saratoga, so he told Mandujano that he would like for him to ride in the van carrying Gaines Gentry's horses because those horses were very valuable. However, Hayes denied ever instructing or directing Mandujano to go to the sales. Gaines Gentry paid Mandujano $200.00 for the ride to Saratoga. Hayes testified that it was customary for Gaines Gentry to have an employee in the van with the horses while traveling to Saratoga – even if the van company had also placed an employee with the

horses. Accordingly, Hayes acknowledged that if Mandujano had not gone to Saratoga, Gaines Gentry would have sent someone else in the van.

Hayes testified that as soon as Mandujano got out of the van in Saratoga, Mandujano was "done with us." However, Hayes acknowledged that Mandujano would show Gaines Gentry's horses at the sales. Hayes's testimony also confirmed that Gaines Gentry was owned by Olin Gentry and Thomas Gaines and that Olin Gentry is associated with Eaton and possibly has an ownership interest in Eaton. Hayes explained that there was a three-day select sale and an open sale for "lesser horses." Hayes believed Mandujano would call consignors to line up work at Saratoga, so he did not attempt to find any other work for Mandujano at the Saratoga sales. He knew that Mandujano had worked for Paramount and Eaton at sales in previous years.

According to Hayes, it was expected that Mandujano would return to work at Gaines Gentry after the sale. Hayes testified that he made no arrangements for Mandujano to return to Kentucky because he did not know how long Mandujano was going to work the sales. During the Saratoga sales he received a call from Mandujano because Mandujano was upset with the sleeping arrangements there. Hayes told him there was a Sallee van coming home every day.

J. Reiley McDonald: McDonald was the managing member for Eaton, and his deposition was introduced into evidence. McDonald testified that Eaton operated as a sales agent to sell horses at auctions and that Eaton sold Gaines

Gentry's horses at Saratoga at the August 2007 sales. McDonald testified that both Thomas Gaines and Olin Gentry are shareholders in Eaton Sales. Once at Saratoga, the horses are handled and shown by people Eaton hires as contract laborers. A showman's contract was for a limited number of days. McDonald denied Mandujano was ever Eaton's employee; instead, he was an independent contractor hired for short-term work.

According to McDonald, Mandujano was hired for his skill and was never told how to show the horses. Eaton paid Mandujano $1,200.00 for his time in Saratoga. Mandujano showed horses for Eaton from August 3 to August 7, 2007. After August 7, 2007, Mandujano was free to do as he pleased. Eaton did not make any travel arrangements for Mandujano.

**The ALJ's Opinion, Award and Order**

Following submission of the evidence, the ALJ entered an Opinion, Award and Order in which he found, among other things, that Mandujano had been injured during the course and scope of his employment with Gaines Gentry. The ALJ's factual findings and legal conclusions as to this particular issue provided as follows:

"The threshold issue in this case is whether or not the Plaintiff, Adan Mandujano, was acting within the course and scope of his employment at the time he sustained the injuries on August 12, 2007. The claimant, Adan Mandujano, was an employee of Gaines Gentry Thoroughbreds, LLC (Gaines). The defendant, Gaines, had business interests at Saratoga, New York at the time and place in

question. The claimant was instructed by Gaines, his employer, to travel to Saratoga on this occasion. He was instructed by John Hayes, general manager for Gaines Gentry, to travel to Saratoga in the horse van in order to be close to the horses and to attend to their care. As an employee of Gaines acting within the course and scope of his employment, the claimant was provided by Gaines with this means of transportation from central Kentucky to Saratoga, New York.

"At the time of claimant's departure from Kentucky, this ALJ believes that both claimant and Gaines contemplated that claimant would return to Kentucky within an indeterminate period of time – not less than a week or so, but almost certainly within a month. Both parties acknowledged there was no precise schedule for the claimant's date of return, but only that he would return after his work at Saratoga was completed.

"The claimant departed the Gaines Gentry farm around lunchtime on Friday, August 3, 2007 and was expected to arrive in New York the next morning. The claimant was riding in the back of the horse van with two of Gaines' thoroughbred horses. The van did not contain any separate compartment for the claimant and there is no evidence that it contained any passenger seat, seat belt, safety netting, or any other safety equipment. The claimant was paid $200 by Gaines Gentry for accompanying the horses in the van from Lexington to Saratoga.

"Mr. Mandujano had worked for Gaines Gentry since 2005 as a farmhand/groom and a showman. Eaton Sales is a consignment agent with whom Gaines Gentry has an established history. On the occasion in question, Eaton Sales

was acting as the sales agent of Gaines Gentry's thoroughbred horses which were to be sold at Saratoga. It was understood that Mr. Mandujano would be assisting Eaton Sales as a showman during the Saratoga sales. As a showman, Mr. Mandujano was not only familiar with the horses owned by Gaines Gentry, but was also trained and skilled in cleaning and preparing the horses and leading and presenting the horses in the best light possible to prospective purchasers. While at Saratoga and while performing services for Eaton Sales, the claimant was paid by Eaton. After Eaton had completed its mission, Mr. Mandujano stayed for an additional three or four days and rendered the same type of services to Paramount Sales, who paid the claimant for the services which he rendered. The rendering of these services to Paramount was not inconsistent with and did not conflict with the expectations, instructions, or interests of Gaines Gentry. Further, there was no ride home available to Mr. Mandujano at the time he completed work for Eaton Sales.

"The claimant was 'on his own' in finding a ride back to Kentucky. No arrangements had been [made] for Plaintiff by his employer, Gaines Gentry. There was nothing unusual about this arrangement, or lack thereof, and it was consistent with the practices within the industry. The practice of sending a groom or showman to a horse sale and then leaving him to find his own way back seems to be a part and parcel of the employment of a worker in Mr. Mandujano's position, based on the testimony of the claimant, Mr. Hayes, and Mr. McDonald. This practice of finding one's own way back home was customary in this line of work and as such it is an activity which constitutes a customary part of the

employment and is compensable. McCracken County Health Spa v. Henson, 568 S.W.2d 240 (Ky. App. 1977).

"The Plaintiff was able to secure a ride in the back seat of a truck which departed Saratoga on the evening of August 11, 2007. Thus, the Plaintiff was at Saratoga a total of approximately seven or eight days from the time of his arrival on August 4, 2007. No evidence suggests that claimant stayed in Saratoga longer than contemplated by Gaines or longer than the period of time for which he was given permission, either express or tacit.

"During the early morning hours of August 12, 2007, the truck in which Mr. Mandujano was riding overturned, causing the claimant to be ejected and injured. The Plaintiff acknowledged he was not wearing a seat belt because he was 'tired.' The resolution of this claim is essentially dependent on the answer to the question 'Was Mr. Mandujano an employee of the Defendant and acting within the course and scope of his employment at the time of the accident and the resulting injuries?' The ALJ finds the answer to this inquiry to be in the affirmative. Mr. Mandujano was an employee of Gaines Gentry at the time in question. He had been dispatched to Saratoga for the purpose of not only providing care and attention to the valuable horses owned by Gaines, but to also advance the interests of Gaines Gentry by enhancing the sales of the animals. At the time claimant was instructed to accompany the horses in the van from Kentucky to Saratoga, he was employed by and rendering an economic benefit to his employer, Gaines Gentry. At the time of his dispatch, both parties

contemplated the claimant would return to Kentucky and would continue to work as an employee of Gaines Gentry. Because of this intention and expectation of both parties, it is an inescapable conclusion that the return of the Plaintiff from Saratoga, New York to Lexington, Kentucky was a necessary and inevitable event which had to occur. The 'return to Kentucky' could not possibly have constituted a deviation or departure [from] the course and scope of the claimant's employment. Gaines Gentry argues that claimant ceased to be an employee acting in the course and scope of his employment with Gaines Gentry upon his arrival at Saratoga. The ALJ does not agree. The Plaintiff was not injured during the period of time that he was performing direct services to either Eaton Sales or Paramount Sales. He was not injured until his return trip from Saratoga to Lexington. He was no longer providing services to either Eaton Sales or to Paramount. However, he was still an employee of Gaines Gentry. He was also acting within the course and scope of his employment with Gaines Gentry. The claimant's return to Kentucky was an integral and inevitable part of the completion of the journey which was initiated and prompted by Gaines. This compels a conclusion that claimant was injured while in the course and scope of his employment by Gaines. Consequently, Gaines has full responsibility for the workers' compensation benefits provided and secured under the Act. The ALJ so finds. Armco Steel Corp. v. Lyons, 561 S.W.2d 676 (Ky. App. 1978).

"Defendant may argue, or one might speculate, as to how long [Plaintiff could] have remained in New York working for others or at what point in

time would a temporary deviation become a termination of the claimant's employment with Gaines. Such speculation is not relevant or material to the issue before the ALJ. Without doubt, such point in time was not reached under the facts of this particular case. There is nothing in the evidence which suggests that claimant had stayed at Saratoga beyond the period of time contemplated either by him or by Gaines. As noted above, the total trip was not more than about 10 days. The claimant having been sent and directed to Saratoga by Gaines Gentry, he was entitled to a trip home. When the employer did not provide a means of transportation, the claimant was expected to find a ride home. Nothing in the evidence in this claim suggests that claimant acted unreasonably in the manner in which he sought and found his transportation.

"It is generally acknowledged that an employee whose work entails travel away from the employer's premises [is] generally held in the majority of jurisdictions to be within the course of [his] employment continuously throughout the trip, except when a distinct departure on a personal errand or deviation can be shown. Larson, *Workers' Compensation Law*, Vol. 1, Section 25.00. In the case before us, the claimant made no such departure or deviation from his employment at the time in question.

"In Hayes v. Gibson Hart Company, 789 S.W.2d 775 ([Ky.] 1990), the Kentucky Supreme Court stated that 'the employee's work assignment placed him where he was exposed to the injury for which he seeks compensation, and he could not have been there otherwise. This constitutes a "work-related" injury.'

Without doubt, Mr. Mandujano's employment with Gaines Gentry exposed him to the risk of injury and placed him in the position which led to such injuries. Although the claimant had been prepared to take his own personal vehicle to Saratoga, he had been instructed by Mr. Hayes, his boss, to ride in the van instead so as to attend the horses. Thus, this particular work assignment imposed on [Mr. Mandujano] by Mr. Hayes placed him in a position of having to find a means of transportation back to Kentucky.

"In further support of the ruling herein, the Plaintiff's argument under the doctrine of positional risk is well taken. If an employee finds himself in a dangerous position or is exposed to risk peculiar to his employment which results in injury, that injury is covered under the Act. Corken v. Corken Steel Products, Inc., 385 S.W.2d 949 ([Ky.] 1965); Indian Leasing Co. v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978)."

**The Opinion of the Workers' Compensation Board**

On appeal, the Board affirmed the decision of the ALJ after finding that the ALJ's conclusion that Mandujano was injured during the course and scope of his employment was supported by substantial evidence. The Board particularly noted:

"Substantial evidence supports the premise that Mandujano was on his way home from Saratoga because of his employment. He had been required to ride in the horse van and was expected to show Gaines Gentry's horses at the sale of the more expensive horses. Further, even though all parties knew Mandujano was

on his own in getting home, he was still expected to find a way home and return to work. Thus, substantial evidence supports the ALJ's finding Mandujano's presence in the truck at the time of the MVA was due to his employment, and his injuries were compensable."

The Board further concluded that the "dual-purpose" rule was applicable in this case and, pursuant to that rule, Mandujano's trip was for business purposes because Hayes testified that "even if Mandujano had not ridden with the horses, another employee would have." The Board also rejected the argument that Mandujano's employment with Gaines Gentry "ended" once he arrived in Saratoga:

"The ALJ could easily infer from the evidence Mandujano was to ride to Saratoga in the van and care for and show Gaines Gentry's horses. The fact Mandujano would be working for Eaton and thereafter for Paramount was of no significance. Further, we note Gaines Gentry's owners have an ownership interest in Eaton. Thus, Gaines Gentry's assertion that Mandujano did not perform work for Gaines Gentry after he arrived at Saratoga rings hollow since Mandujano continued to confer a benefit upon Gaines Gentry by showing its valuable horses."

The Board further concluded, even though the issue had not been raised by either party, that the "traveling employee" exception to the "coming-and-going" rule applied in this case and established that Mandujano's injuries occurred during the course and scope of his employment. Gaines Gentry subsequently filed the present appeal.

## General Standards of Review

The claimant bears the burden of proof with regard to every element of a workers' compensation claim, and the ALJ's decision is "conclusive and binding as to all questions of fact." *Carnes v. Tremco Mfg. Co.*, 30 S.W.3d 172, 175-76 (Ky. 2000), *quoting* KRS 342.285(1); *see also Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). When an ALJ finds in favor of the claimant, the question on appeal is whether the ALJ's findings were supported by substantial evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence is "evidence which would permit a fact-finder to reasonably find as it did." *Id.* As the fact-finder, the ALJ has the sole discretion to determine the quality, character, and substance of the evidence. *Whittaker v. Rowland*, 998 S.W.2d 479, 481 (Ky. 1999). Thus, the ALJ may choose to believe or disbelieve any part of the evidence, regardless of its source. *Id.* Moreover, "[a]lthough a party may note evidence which would have supported a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal." *Id.* at 482.

It is the task of the Board to decide whether the evidence is sufficient to support the ALJ's findings. "These are judgment calls. No purpose is served by second-guessing such judgment calls, let alone third-guessing them." *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687 (Ky. 1992). Thus, the function of this Court is limited to correcting the Board only when it "has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing

the evidence so flagrant as to cause gross injustice." *Id.* at 687-88; *see also* KRS 342.290.

Under Kentucky statutory law, an injury must be found to be "work-related" and to "aris[e] out of and in the course of employment" in order to be compensable. KRS 342.0011(1). "In order for an injury to arise out of employment, there must be a causal relationship between the employment and the injury." *McCracken County Health Spa v. Henson*, 568 S.W.2d 240, 241 (Ky. App. 1977). In other words, the employment must subject the worker to an increased risk of injury. *Clark County Bd. of Educ. v. Jacobs*, 278 S.W.3d 140, 143 (Ky. 2009). "[I]n determining whether the injury was work-related 'no single factor should be given conclusive weight.' The coverage decision must be based upon the 'quantum of aggregate facts rather than the existence or nonexistence of any particular factor.'" *Hayes v. Gibson Hart Co.*, 789 S.W.2d 775, 777 (Ky. 1990), *quoting Jackson v. Cowden Mfg. Co.*, 578 S.W.2d 259, 262 (Ky. App. 1978). "Only a reasonable finding that an activity arises in the course of employment may be upheld on appeal." *Jacobs*, 278 S.W.3d at 143. Because Mandujano's injuries occurred off Gaines Gentry's premises, substantial evidence is needed to prove that the employer brought the activity in question within the scope of the employment. *Id.*

**Analysis**

On appeal, Gaines Gentry challenges the determination that Mandujano's injuries arose out of and in the course of his employment with the

horse farm. The issues in this case essentially center on why Mandujano rode in the horse van to Saratoga and whether he was Gaines Gentry's employee for purposes of compensation under the Workers' Compensation Act when he was injured on his return trip to Lexington. Gaines Gentry contends that Mandujano was injured while he was "pursuing personal endeavors." Therefore, his injuries did not occur during the course and scope of his employment with Gaines Gentry. Mandujano challenges this contention and asserts that his injuries are compensable pursuant to the "dual purpose" doctrine and the "traveling employee" exception to the "going and coming" rule.

We initially note that Gaines Gentry takes issue with a number of the ALJ's findings of fact. There are, perhaps, a few factual findings that could have been subject to challenge. However, Gaines Gentry failed to file a petition for reconsideration prior to filing its appeal with the Board. As noted above, KRS 342.285 provides that an ALJ's findings as to questions of fact are conclusive and binding unless a petition for reconsideration is filed. KRS 342.285(1); *see also Bullock v. Goodwill Coal Co.*, 214 S.W.3d 890, 893 (Ky. 2007); *Brasch-Barry Gen. Contractors v. Jones*, 175 S.W.3d 81, 83 (Ky. 2005). Thus, we are bound by the ALJ's findings of fact in this case. The question, then, is whether the ALJ properly applied those facts to the law in concluding that Mandujano's injuries arose out of and in the course of his employment.

Gaines Gentry first contends that the ALJ and the Board erroneously relied upon the "dual purpose" doctrine in support of their conclusion that

Mandujano's injuries are compensable. That doctrine addresses situations in which an employee is injured during a trip that was undertaken for both business and personal purposes. As noted above, Gaines Gentry argues that Mandujano was on a "personal errand" when he traveled to Saratoga because he wanted to work the horse sales there in order to make more money than he normally earned at Gaines Gentry. Therefore, the argument goes, the ALJ erred in finding Mandujano's injuries to be work-related. In response, Mandujano argues that his trip qualifies as a business trip because he was looking after Gaines Gentry's horses on the way to Saratoga and because he showed the horses at the sales upon arriving there. Therefore, the injuries suffered on his return to Kentucky were compensable under the Act.

Kentucky has adopted the following test for determining whether a trip that has both personal and business purposes is compensable under the Workers' Compensation Act: "[W]hen a trip serves both business and personal purposes, it is a personal trip if the trip would have been made in spite of the failure or absence of the job purpose and would have been dropped in event of the failure of the private purpose, though the business errand remained undone; it is a business trip if a trip of this kind would have been made in spite of the failure or absence of the private purpose, because the service to be performed for the employer would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey. If permission to take a personal trip is made conditional on the performance of a business errand, the trip becomes

a business trip." *Craddock v. Imperial Cas. & Indem. Co.*, 451 S.W.2d 658, 661 (Ky. 1970).

Applying this test, the trip in question clearly qualifies as a business trip because John Hayes acknowledged that if Mandujano had not gone to Saratoga, Gaines Gentry would have sent another employee in the horse van to watch the horses during their trip to New York. Therefore, Mandujano's trip to Saratoga was a business trip under the dual purpose doctrine since "the service to be performed for the employer would have caused the journey to be made by someone even if it had not coincided with the employee's personal journey." *Id.*

Gaines Gentry's arguments to the contrary are unavailing. For example, it argues that "the entire premise for Mandujano attending the Saratoga sale was for a private purpose" and that "he had already made arrangements to go to New York well before requesting or being offered the ride to New York by Gaines Gentry." However, this argument ignores the reality that regardless of his original intentions, Mandujano was asked by Gaines Gentry to travel in a horse van with the farm's horses to care for them on the way to Saratoga, and he was paid for his efforts. Hayes admitted that another employee would have performed the task if Mandujano had not; so the trip was plainly a business trip under the "dual purpose" doctrine.[3] The argument is also made that Gaines Gentry did not benefit

[3] We further note that under the circumstances the ALJ perhaps could have inferred that the granting of Mandujano's request to work the sales was made conditional on his agreeing to ride with Gaines Gentry's horses to Saratoga. Mandujano's testimony at the hearing reflected that he had wanted to drive his own truck to the sales but was told by Eaton – his boss – that Gaines Gentry wanted him to travel with the horses instead. "If permission to take a personal trip is made conditional on the performance of a business errand, the trip becomes a business trip."

from Mandujano's showing horses on behalf of Eaton Sales, but we agree with the Board that this contention "rings hollow." J. Reiley McDonald testified that Gaines Gentry's owners have an ownership interest in Eaton, and Mandujano showed the farm's horses at the sale after arriving in Saratoga, thereby conveying an obvious economic benefit to his employer. Consequently, we believe that the ALJ and the Board did not err in finding that Mandujano's trip was for business purposes pursuant to the "dual purpose" doctrine.

Gaines Gentry also challenges the reliance of the ALJ and the Board on the "positional risk" doctrine and the "traveling employee" exception to the "going and coming" rule in determining that Mandujano's injuries arose out of and in the course of his employment. The "positional risk" doctrine generally provides that when employment places a worker in what turns out to be a dangerous place, a resulting injury is considered work-related even though the injury-producing mechanism itself was not necessarily work-related. *See Hayes*, 789 S.W.2d at 777; *Corken v. Corken Steel Products, Inc.*, 385 S.W.2d 949, 950 (Ky. 1964).

A close, more-specific, cousin of this concept – and one that is perhaps more appropriately applied here – is the so-called "risks of the street" doctrine. Under this rule, "an employee's injuries sustained as the result of exposure to risks of the streets or highways are covered by the compensation act if the exposure to the hazards was the result of his work or if his employment was the reason for his presence at the place of danger." *Spurgeon v. Blue Diamond Coal*

*Craddock*, 451 S.W.2d at 661. Under the circumstances, though, we need not resolve this issue definitively.

*Co.*, 469 S.W.2d 550, 553 (Ky. 1971). Moreover, such sojourns need not be a regular part of a person's employment. "[W]hen a workman is sent into the street on his master's business, *whether it be occasionally or habitually*, his employment necessarily involves exposure to the risks of the streets and injury from such a cause arises out of his employment." *Palmer v. Main*, 209 Ky. 226, 272 S.W. 736, 739 (1925) (emphasis added and citation omitted); *see also Fortney v. Airtran Airways, Inc.*, 319 S.W.3d 325, 328-29 (Ky. 2010); *Harlan-Wallins Coal Corp. v. Foster*, 277 S.W.2d 14, 15 (Ky. 1955).

This rule is also closely related to the so-called "service/benefit to the employer" doctrine or – as referenced in this case – the "traveling employee" doctrine, all of which share many, if not most, of the same principles and all of which are exceptions to the "going and coming" rule.[4] Indeed, for the most part, these doctrines appear to be different ways of saying the same thing;[5] *i.e.*, "transitory activities of employees are covered [under the Act] if they are

[4] The "going and coming" rule considers an injury incurred by a worker while commuting between his home and workplace to be non-compensable absent exceptional circumstances. *Fortney*, 319 S.W.3d at 328. "The rationale supporting the rule is that perils encountered during travel to and from work are no different from those encountered by the general public and, thus, are neither occupational nor industrial hazards for which the employer is liable." *Id.* However, there are a number of exceptions to the rule to address the variety of injurious circumstances that may occur outside of the standard commute. *Id.* We note this only for clarification purposes because Gaines Gentry does not argue that the "going and coming" rule somehow precludes coverage under the Act in this case.

[5] It has been noted that "[t]he principles supporting the exceptions [to the "going and coming" rule] often overlap." *Fortney*, 319 S.W.3d at 328.

providing some service to the employer[.]" *Receveur Const. Co./Realm, Inc. v. Rogers*, 958 S.W.2d 18, 20 (Ky. 1997).[6]

Here, the ALJ and the Board concluded after applying this principle of law that Mandujano's injuries in the automobile accident resulted from his employment with Gaines Gentry. Substantial evidence supports this conclusion. As discussed above, it was reasonable for the ALJ and the Board to conclude that Mandujano's trip to Saratoga was for a business purpose since he was conferring a benefit to Gaines Gentry by traveling with the horses to New York and by showing them during the sales. Gaines Gentry argues, however, that any causal link between Mandujano's employment and his injuries was effectively severed once he arrived in Saratoga or – at the latest – when he began showing horses for Paramount Sales. Because of this "distinct departure and deviation from his employment," Gaines Gentry argues, Mandujano's injuries did not arise out of and in the course of his employment. Instead, he would have only returned to his status as an employee of Gaines Gentry once he had returned to Lexington and had resumed his customary work at the horse farm.

As a general rule, "[e]mployees whose work entails travel away from the employer's premises are … within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown." *Black v. Tichenor*, 396 S.W.2d 794, 797 (Ky. 1965) (citation omitted);

[6] Gaines Gentry argues that the "traveling employee" exception, or any variation thereon, is only applicable when a contractual employment arrangement exists between an employee and employer. However, this does not appear to be a mandatory requirement. Instead, the overriding concern is whether the travel and employment are related. *See Spurgeon*, *supra*; *Palmer*, *supra*.

*see also Haney v. Butler*, 990 S.W.2d 611, 615 (Ky. 1999). Accordingly, the injuries suffered by Mandujano on his return trip to Kentucky would be considered compensable in the absence of their having occurred during a "distinct departure on a personal errand." However, Gaines Gentry argues that once Mandujano began working for Paramount Sales (at the latest), he had effectively undertaken a personal errand and was, therefore, no longer acting within the course and scope of his employment when he was injured.

This argument, though, ignores the fact that Mandujano was not injured while working for Paramount Sales or even for Eaton Sales. Instead, he was injured while he was traveling back to Lexington to resume his work at the horse farm. Even assuming that Mandujano's work for Eaton and Paramount could be considered "personal errands" that would have removed him from compensation coverage *at the time he was working for them*, Mandujano's coverage under the Act resumed once these deviations ceased and he undertook the journey home. As held by the Supreme Court of New Jersey in *Rainear v. C. J. Rainear Co., Inc.*, 307 A.2d 72, 76 (N.J. 1973): "During the course of his travel the employee may deviate for personal purposes unrelated to his work and thus remove himself from compensation coverage during the continuance of the deviation. But ordinarily the deviation will not embody any intent to abandon the work-connected travel home and when the deviation is terminated and the travel home is resumed the coverage will resume." We believe this reasoning is sound and adopt it as our own. *See also, e.g.*, *Gentry v. Lilly Co.*, 476 S.W.2d 252, 255

(Tenn. 1971); *Lager v. Dep't of Indus., Labor & Human Relations*, 185 N.W.2d 300, 306 (Wis. 1971). As noted by the ALJ, at the time of his dispatch, both parties contemplated that Mandujano would return to Kentucky after his work at the sales and would continue to work as an employee of Gaines Gentry. Because of this, his journey home was a necessary and inevitable event inextricably linked to his employment. Thus, the injuries suffered by Mandujano during his return were correctly found by the ALJ and the Board to have occurred during the course of his employment, and they were, therefore, compensable.

We further note that the facts of this case also lend themselves to the applicability of yet another exception to the "going and coming" rule – the so-called "special errand" doctrine. A close relative of the "risks of the street" doctrine (indeed, for all intents and purposes it is essentially the same notion), this rule provides that "[i]f the appellant was 'sent into the street upon a special errand' for the employer, compensation would be payable for an injury he sustained while thus engaged." *Spurgeon*, 469 S.W.2d at 553, *quoting Palmer*, 209 Ky. 226, 272 S.W. at 739; *see also Husman Snack Foods Co. v. Dillon*, 591 S.W.2d 701, 704 (Ky. App. 1979) (holding that when an employee was in an "accident while driving home … during the course of a special errand for his employer[,]" the "going and coming rule" did not apply "because the travel itself involved a mission … distinct from commuting back and forth to a fixed place of employment."). Under the circumstances, Mandujano could certainly argue that he was injured during the course of a "special errand" for his employer. However, we need not belabor the

point since we have already concluded that the decisions of the ALJ and Board are supported by substantial evidence.

## Conclusion

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

ALL CONCUR.

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