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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001032-WC

CARING PEOPLE SERVICES, LLC — APPELLANT

APPEAL FROM WORKERS' COMPENSATION BOARD
v. ACTION NO. WC-14-78061

MARY GRAY, HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, JONES, AND VANMETER, JUDGES.

JONES, JUDGE: This appeal arises out of an opinion issued by Kentucky's Workers' Compensation Board ("Board") affirming an award of benefits to the Appellee, Mary Gray. The Appellant, Caring People Service, LLC ("Caring People"), contends that the Board erred because Gray's injury occurred while she was in her personal vehicle during her commute from her home to her regular

worksite, and therefore, is not work-related. Having reviewed the record in conjunction with the applicable legal authorities, we affirm.

I. Factual and Procedural Background

Gray began working for Caring People as a personal helper in 2013. Her work duties primarily consisted of providing nonmedical personal care services to clients at various locations, including their homes. On May 28, 2014, Gray was involved in a motor vehicle accident while traveling to a client's home in Ledbetter, Kentucky. Gray sustained injuries to her chest, abdomen, neck, back, teeth, right and left flank area, left leg, right foot/ankle/leg, and hiatal hernia.

On September 3, 2014, Gray filed a Form 101 Application for Resolution of Injury Claim with the Department of Workers' Claims seeking benefits for her injuries. As an initial matter, Caring People asserted that Gray was not entitled to any compensation benefits because her injury was not work-related. Gray maintained that her injuries were work-related because her employment required travel beyond Caring People's main location.

Following a benefit review conference and a final hearing, the Administrative Law Judge ("ALJ") issued an opinion, order and award in Gray's favor. As related to the work-relatedness issue, the ALJ determined as follows:

> As a threshold issue, the employer disputes that the automobile accident in which plaintiff was injured occurred during the course and scope of her employment. There is no dispute that plaintiff was working as an in-home nonmedical caregiver and that for some time she had been providing care for only one company client who lived in Ledbetter, Kentucky, approximately 9 miles from

her own home. There is also no dispute her automobile accident occurred on May 28, 2014 while she was returning to her home after her daily duties with that client were completed.[1]

However, the defendant employer maintains plaintiff commuted to and from the same client's house each day and, as such, her travel was no different than that of any employee driving to or from their regular place of business. The employer thus argues plaintiff's claim is not compensable as regular travel to and from one's place of employment is barred by the "going and coming rule." In this regard, the defendant also points out that although plaintiff was at one time paid mileage expenses, at the time of the accident she was no longer receiving mileage pay. The defendant also stresses that plaintiff was not required to travel to different clients' homes each day and that her workday consisted of traveling to and from the same client's home each day. The defendant therefore argues plaintiff traveled to and from a fixed location, tantamount to the employer's office, and her commute to and from the same fixed location is not compensable under the Going and Coming rule. The defendant highlights such points to differentiate the case at bar from *Olsten-Kimberly Quality Care v. Parr*, 965 S.W.2d 155 (Ky. 1998). In *Parr*, the Kentucky Supreme Court held that an in-home nurse who traveled to different patients' homes each day and who was injured while traveling between two such homes suffered a work-related and compensable injury within the course and scope of her employment.

Despite the defendant's attempts to distinguish the facts presented from the holding in *Parr*, the ALJ is not persuaded. Indeed, the defendant's "distinctions" do not demonstrate any reason to apply a different analysis to plaintiff's claim in this situation. Although the defendant employer in this case did not have any fixed office to which all employees would report each day and then travel to their assignments, neither were the employees hired to care for only one client at one location during

[1] The accident actually happened on Gray's way to Ledbetter not on her way home. The ALJ subsequently corrected this mistake in a separate order.

> their tenure as employees. Indeed, plaintiff cared for different clients during her employment with the defendant.
>
> In addition, the defendant acknowledged employees, including plaintiff, may even be required to travel and run errands with the client if the client so desired. In a situation such as this, the ALJ is simply not persuaded that a client's home rises to the same level as an employer's fixed office or fixed place of business such that any travel commute to or from the location would be barred by the Going and Coming rule. Indeed, as suggested by Carolyn Roberts, a co-owner of the employer, plaintiff was required to travel to wherever the client was. Given that plaintiff would, and did, care for different clients during the course of her employment, combined with the fact that she may have to travel to wherever such clients required her service, whether that be at their homes or at any other location, it cannot be said plaintiff's travel to or from the client's home equates to commuting to and from the employer's fixed office or regular place of business, which always remains within the control of the employer.
>
> For these reasons, the ALJ is persuaded the holding in *Parr* is applicable and plaintiff's injury occurred within the course and scope of her employment, rendering it a compensable injury.

After concluding that Gray's injuries were work-related, the ALJ awarded her permanent partial disability benefits as well as related medical expenses. Caring People moved for reconsideration on the work-relatedness issue. The ALJ refused to vacate the award, but did issue additional findings and conclusions on the work-relatedness:

> Regardless of whether plaintiff's injury occurred on the way to or from the client's home, the fact remains plaintiff was not injured while traveling to her employer's fixed place of business. This also is not changed by the

> fact that the defendant did not have a fixed place of business as plaintiff's travel to and from her employer's clients was a necessary requirement and of necessary benefit to the employer. Indeed, the employer has no service to offer clients if it's employees, such as plaintiff, do not travel to and from client homes. Clearly, plaintiff's travel to and from the employer's client's home provided an unquestionable benefit to the employer.
>
> The defendant also takes issue with the fact that the Administrative Law Judge noted that, as part of her required job duties, plaintiff also would occasionally run errands for clients. The defendant maintains this point is irrelevant as plaintiff was not injured in this case while running an errand. However, the point was merely expressed to demonstrate the degree to which travel was a regular, recurrent, and necessary part of plaintiff's employment.

Caring People then appealed to the Board. The Board affirmed the ALJ. The Board determined that the evidence of record supported the ALJ's determination that Gray's injuries "occurred within the course and scope of her employment and that the traveling employee exception to the 'going and coming' rule is applicable to the case *sub judice*." The Board further explained:

> Caring People had a fixed business location and employed three office personnel who reported to work every day in Paducah, Kentucky. However, Gray was not an office staff employee. She was a sitter/personal helper. Gray was not required to report to [Caring People's] office. Rather, throughout the tenure of her employment, Gray traveled to the clients' residences to provided non-medical care. In fact, as noted by the ALJ, Gray cared for different clients during the course of her employment, and traveled to various locations in western Kentucky to wherever such clients required her service, whether that be at their homes or any other location. We decline to narrow the analysis of Gray's travel activity on the day of the [accident] as implied in [Caring People's]

> arguments on appeal. Rather, the appropriate scope is to consider the entire nature of Gray's employment and the character of [Caring People's] services in determining whether the traveling employee exception is applicable. *See Kimberly Quality Care v. Parr*, 965 S.W.2d at 157-58.

This appeal followed.

II. Standard of Review

Pursuant to KRS[2] 342.285, the ALJ is the sole finder of fact in workers' compensation claims. Our courts have construed this authority to mean that the ALJ has the sole discretion to determine the quality, character, weight, credibility, and substance of the evidence, and to draw reasonable inferences from that evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985); *McCloud v. Beth–Elkhorn Corp.*, 514 S.W.2d 46, 47 (Ky. 1974). Moreover, an ALJ has sole discretion to decide whom and what to believe, and may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

On review, neither the Board nor the appellate court can substitute its judgment for that of the ALJ as to the weight of evidence on questions of fact. *Shields v. Pittsburgh & Midway Coal Mining Co.*, 634 S.W.2d 440, 441 (Ky. App. 1982). A reviewing body cannot second-guess or disturb discretionary decisions of an ALJ unless those decisions amount to an abuse of discretion. *Medley v. Bd. of Educ., Shelby County*, 168 S.W.3d 398, 406 (Ky. App. 2004). Discretion is

[2] Kentucky Revised Statutes.

abused only when an ALJ's decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001). To demonstrate an abuse of discretion, "[a] party who appeals a finding that favors the party with the burden of proof must show that no substantial evidence supported the finding, *i.e.*, that the finding was unreasonable under the evidence." *Abel Verdon Const. v. Rivera*, 348 S.W.3d 749, 754 (Ky. 2011).

III. Analysis

The sole issue in this case is whether Gray suffered a work-related injury. "Under KRS 342.0011(1), 'injury' is defined as 'any work-related traumatic event . . . arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.'" *Abbott Laboratories v. Smith*, 205 S.W.3d 249, 253 (Ky. App. 2006). "[T]he language, 'in the course of . . . employment', refers to the time, place, and circumstances of the accident, and the words, 'arising out of . . . employment', relate to the cause or source of the accident." *Id*.

It is well settled, that "[u]nder the 'coming-and-going' rule, injuries that occur during travel to and from work generally are not considered work-related and compensable." *Warrior Coal Co., LLC v. Stroud*, 151 S.W.3d 29, 31 (Ky. 2004). However, "Kentucky has adopted the majority view stated in *Larson's Workers' Compensation Law*, § 25, that where work involves travel away from the employer's premises, the worker is considered to be within the course of the employment during the entire trip unless a distinct departure on a personal

errand is shown." *Haney v. Butler*, 990 S.W.2d 611, 615 (Ky. 1999). "The rule excluding injuries that occur off the employer's premises, during travel between work and home, does not apply if the journey is part of the service for which the worker is employed or otherwise benefits the employer." *Fortney v. Airtran Airways, Inc.*, 319 S.W.3d 325, 329 (Ky. 2010).

Neither the mode of transportation nor how the employee is paid are controlling factors. *See Black v. Tichenor*, 396 S.W.2d 794, 796 (Ky. 1965). "Although payment for travel time brings the trip within the course of the employment, the lack of payment does not exclude a trip from the course of employment." *Fortney*, 319 S.W.3d at 329. The more important inquiry is whether the travel is for the benefit of the employer. "Work-related travel has come to mean travel which is for the convenience of the employer as opposed to travel for the convenience of the employee." *Olsten-Kimberly Quality Care v. Parr*, 965 S.W.2d 155, 157 (Ky. 1998).

The Supreme Court of Kentucky considered a remarkably similar case in *Parr*, *supra*. In *Parr*, the claimant was employed as a certified nursing assistant for a home health care service provider. The claimant's job duties included bathing, dressing, manicuring, and exercising patients. The claimant received her weekly assignments via the telephone. She did not report to the employer's physical office. Once the claimant completed her job duties, she was required to complete and then return paperwork to the employer, either by mail or hand delivery. The claimant was responsible for her own transportation to and from her

patients' homes and she was compensated for mileage incurred when providing service to non-private patients, but she was not compensated for mileage incurred when providing services to private patients. The claimant sustained serious injury resulting in permanent total disability after being involved in a motor vehicle accident while traveling from a patient's home to her home.

In *Parr*, the Court ultimately concluded that the claimant's injury was sustained within the course and scope of her employment. The Court held that even though the claimant was not provided transportation by the employer, traveling was still an "essential element" of the employment relationship. *Id*. at 158. The Court explained:

> Even more appropriate to the case at bar is the idea that "[w]hen travel is a requirement of employment and is implicit in the understanding between the employee and the employer at the time the employment contract was entered into, then injuries which occur going to or coming from a work place will generally be held to be work-related and compensable, except when a distinct departure or deviation on a personal errand is shown." William S. Haynes, Kentucky Jurisprudence, Workers' Compensation, § 10–3 (revised 1990).
>
> Herein, the ALJ stated the applicable standard regarding the service to the employer exception to the going and coming rule. However, he made a legal error when conducting his analysis with respect to the facts herein. Specifically, the ALJ narrowly focused on whether claimant was providing a service to the employer by going home to complete the necessary paperwork. However, the evidence of record reflected that the very nature of the employment encompassed claimant's travel to and from patients' homes as "travel" was a part of the services being offered by the employer to its clients.

. . .

> In addition, the employer's allegations that this is merely another "commuter-type" situation is without merit. Typically, a worker is not performing any service for the employer, or furthering the employer's interests, by merely traveling to and from the job site in order to be part of the work force. However, this is not a case where the employer's business did not benefit, and claimant's employment relationship did not begin, until she reached a particular job site. Rather, driving to and from the patients' homes was a part of her job responsibilities as it was incident to the employer's enterprise. Specifically, as the very character of the employer's services included sending a health care provider to the patients' homes, claimant's travel was occasioned by the very purpose of the employer's business. Therefore, we agree with the Court of Appeals that travel was an integral and necessary part of the employment relationship herein.

Id. at 157-158.

In this case, we agree with the ALJ and the Board that Gray's travel to the home in Ledbetter was a benefit to Caring People. The evidence indicates that Caring People's central purpose was to provide off-site care for clients. Gray was hired to provide that care and she was required to be able to transport herself to the client. Certainly, "travel" was an "essential element" of the Gray's job duties and such "travel" was for the benefit of Caring People. It is undisputed that without "travel" to a client's home or location Caring People's services would be impossible to perform. Gray was involved in providing that service – travel to the client – when the she sustained the injuries in question. Therefore, the ALJ correctly determined that Gray's injuries were compensable.

IV. Conclusion

For the reasons set forth above, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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