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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

# Court of Appeals

NO. 2017-CA-000701-WC

BILLY JOE GIBSON — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. 15-WC-02010

COLUMBUS HOGGS AGENT; HON. STEPHANIE KINNEY, ADMINISTRATIVE LAW JUDGE; AND KENTUCKY WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, MAZE, AND NICKELL, JUDGES.

MAZE, JUDGE: Billy Joe Gibson (Gibson) petitions for review of a Workers' Compensation Board's (Board's) decision affirming an administrative law judge's (ALJ's) dismissal of Gibson's claim for benefits resulting from a motor vehicle accident. We affirm.

## Background

Gibson has worked for Columbus Hoggs Agent (Columbus) for several years. While working for Columbus in 2013, Gibson was involved in a car accident while driving a truck provided by Columbus. The truck was part of Gibson's overall compensation and was in Gibson's possession at all times. The car accident occurred while Gibson was leaving his step-daughter's school. He had dropped her off at school and was on his way to inspect a gas well as part of his employment. The accident happened as he was pulling out onto US 119 from the school and he was hit from the back.

Gibson contends that because he was on his way to inspect the gas well, the accident happened while in the course of his employment. The ALJ, however, found that because the accident happened while he was leaving the school, it was a personal errand and "occurred while he was engaged in a substantial deviation from his regular work activity." Gibson contests this claiming that it is the route he would have taken regardless of whether or not he went to the school because the school is located directly on the route. It is not disputed, however, that Gibson was hit from the back while exiting the school property. The ALJ dismissed his claim and the Workers' Compensation Board affirmed the ALJ's decision. This appeal follows.

## Standard of Review

It is well-established that a claimant in a workers' compensation claim bears the burden of proving each essential element of his claim. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925, 928 (Ky. 2002). Where the party that bears the burden of proof is unsuccessful before the ALJ, the question on appeal is whether the evidence is so overwhelming upon consideration of the record as a whole as to compel a finding in claimant's favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986). The function of this Court's review of the Board is to correct the Board only where the Court perceives that the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice. *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

## Analysis

On appeal, Gibson contends that the Board erred in affirming the ALJ's decision because the ALJ erred in finding that the going and coming rule applied, without an exception in this case.

The Kentucky Supreme Court in *Receveur Construction Co. v. Rogers*, 958 S.W.2d 18, 20 (Ky. 1997), explained that the general coming and

going rule "is that injuries sustained by workers when they are going to or returning from the place where they regularly perform the duties connected with their employment are not deemed to arise out of and in the course of the employment . . . ." There are, however, exceptions to this general rule. *Id.* For example, the former Court of Appeals in *Craddock v. Imperial Casualty and Indemnity Co.*, 451 S.W.2d 658, 661 (Ky. 1970), explained that,

> [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.

Similarly, the "service/benefit" exception will 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).

Here, Gibson was involved in a personal errand in dropping his step-daughter off at school. It is a personal trip in that it would have been made regardless of Gibson's job purpose. Additionally, he would have traveled to check the well regardless of dropping her off at school. Similarly, the act of dropping her off at school did not benefit the employer. Therefore, because the injury occurred while exiting the school, which was a personal errand, the exceptions to the going

and coming rule do not apply. As the ALJ and Board applied the correct law to the supported facts of this case, there is no gross injustice.

## Conclusion

For the reasons stated herein, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Randy Clark
Michael Fleet Johnson
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Carl M. Brashear
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