IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: NOVEMBER 25, 2009
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2009-SC-000218-WC

US AIRWAYS GROUP, INC. — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2008-CA-001811-WC
WORKERS' COMPENSATION BOARD NO. 07-01293

MAIMOUNA BARRY;
HONORABLE MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The Court of Appeals determined that the Administrative Law Judge and Workers' Compensation Board majority erred as a matter of law when holding that the "going and coming" rule barred compensation for the claimant's injury. We affirm. The fact that an employee passes through the airport at which she normally works while returning home from a business trip will not, by itself, terminate her status as a traveling employee.

The facts are undisputed. The claimant worked as a part-time customer service representative for US Airways at the Louisville International Airport. She worked at the airline's ticket and gate counters performing duties that involved reservations, ticket sales, passenger check-in, luggage handling, and

jet way bridge operation. The job also required her to attend periodic training programs.

The employer sent the claimant to Charlotte, North Carolina late in November 2006 for three days of mandatory computer training. The employer paid her airfare, hotel, a per diem amount for meals, and an hourly rate for time spent on the aircraft and in classroom training. It did not pay for the time that she spent waiting to board the aircraft. Nor did it pay for the time and expenses of travel between the Louisville airport and the claimant's home upon departure or return.

The claimant returned to Louisville after completing the training. She arrived at the airport at about 3:35 p.m. on December 2, 2006, and picked up her bag. After doing so, she went to the US Airways counter to discuss her next shift with her supervisor and then left for home. The vehicle that she drove was rear-ended at about 3:45 p.m., while stopped in traffic on the Watterson Expressway. Having sustained neck, left shoulder, and low back injuries in the accident, the claimant sought workers' compensation benefits.

The employer resisted the claim, asserting that the going and coming rule barred compensation. Thus, the ALJ bifurcated the claim to consider the matter and held the remaining issues in abeyance. The ALJ determined ultimately that the incident did not fall within an exception to the going and coming rule and dismissed the claim. We have concluded that the ALJ erred.

KRS 342.0011(1) requires an injury to arise out of and in the course of

employment, in other words to be work-related, in order to be compensable. Chapter 342 generally deems an injury sustained during transit between home and the place where an individual regularly works not to be work-related.[1] The rationale for the "going and coming" rule is that an employer has no interest in an employee's choice of where to live or responsibility for risks the employee encounters while traveling to and from work. Travel performed in service to the employer constitutes an exception to the going and coming rule, which is known as the traveling employee doctrine.

Kentucky applies the traveling employee doctrine in instances where the employment contract requires a worker to travel.[2] Grounded in the positional risk doctrine,[3] the traveling employee doctrine considers an injury that occurs while the employee is in travel status to be work-related unless the worker was engaged in a significant departure from the purpose of the trip. Thus, injuries that occur during travel status are compensable when due to the need to sleep in a hotel, eat in a restaurant, travel to or from an airport, and so forth.[4] The duration of travel status depends on the facts and circumstances. A worker is in travel status continuously when travel is performed in service to the

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[1] Receveur Construction Company/Realm, Inc. v. Rogers, 958 S.W.2d 18, 20 (Ky. 1997); Kaycee Coal Co. v. Short, 450 S.W.2d 262 (Ky. 1970); Harlan Collieries v. Shell, 239 S.W.2d 923 (Ky. 1951).

[2] Olsten-Kimberly Quality Care v. Parr, 965 S.W2d 155, 157 (Ky. 1998).

[3] See Corken v. Corken Steel Products, Inc., 385 S.W.2d 949 (Ky. 1964) (when employment places a worker in what turns out to be a dangerous place, a resulting injury is work-related).

[4] See Black v. Tichenor, 396 S.W.2d 794, 797 (Ky. 1965); Turner Day & Woolworth Handle Company v. Pennington, 250 Ky. 433, 63 S.W.2d 490 (1933); Standard Oil Co. (Kentucky) v. Witt, 283 Ky. 327, 141 S.W.2d 271 (1940).

employer, a fact that distinguishes travel between home and a worksite away from the regular place of employment from commuting between home and the regular place of employment.[5]

This is not a case in which the injury occurred during a significant deviation from the employer's service. Nor is it a case in which an employee who engaged in business travel, then reported back to the usual work station for the remainder of the day or who was required to report back to the employer's place of business at the end of each work day. In such cases, travel to and from the worker's home falls squarely within the going and coming rule. The travel at issue presently does not.

The claimant's part-time job required her to travel from her home in Louisville to Charlotte, attend a three-day computer training session, and return to her home in Louisville. We consider the fact that travel to and from Charlotte required her to pass through the Louisville airport and the fact that the employer paid only for time spent in flight and in the classroom to be immaterial. We also consider the fact that the claimant spoke briefly with her supervisor to be immaterial. The traveling employee exception encompassed the entire round trip between the claimant's home and Charlotte because she made the trip in service to her employer. Thus, she remained in travel status when driving from the airport to her home on December 2, 2006, just as she

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[5] See Black v. Tichenor, 396 S.W.2d at 796; Husman Snack Foods Co. v. Dillon, 591 S.W.2d 701 (Ky. App. 1979). See also Arthur Larson and Lex K. Larson, Larson's Workmen's Compensation § 14.01 (2009).

would have been had her work station been located somewhere other than at the airport.

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

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