

Let It Snow! Let It Snow! Let It Snow! There Is No Bad Weather Exception to the Coming and Going Rule for NJ Workers' Compensation

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The New Jersey Appellate Division has determined that there is no “bad weather” exception to compensability in New Jersey workers’ compensation in the case of *Adi Kotler v. DCH Motors, LLC v. Safety National Casualty Corp.*, 2014 N.J.Super. Unpub. LEXIS 1363 (App. Div. June 11, 2014). The essential facts of the case were undisputed. On December 26, 2010, Adi Kotler, a car salesman, suffered serious injuries in a motor vehicle accident as he was driving home from his place of employment, a car dealership. Kotler and his manager, Thomas Chrusciel, were the only witnesses.

In December 2010, Kotler was a new employee who had only been working for about five weeks. Kotler did not work on Sundays, when the dealership was closed. On Saturday evening, December 25, 2010, Chrusciel called Kotler and asked him to come to the dealership the following day to move cars due to a pending snowstorm. Kotler testified he felt obligated because he was a new employee and wanted to impress his employer. Although moving cars was not part of Kotler’s normal job duties, the dealership’s employees helped to clear the lot of cars when it snowed.

Kotler arrived at the dealership at 8:00 AM on Sunday. Kotler and Chrusciel were moving cars when snow began falling at about 10:00 AM. Kotler told Chrusciel that his car did not handle well in the snow and asked to leave. Chrusciel told Kotler to go home. When Kotler left, the roads were covered with about one inch of snow. Kotler took his normal route home. After about fifteen minutes into his drive time, his car slid and crashed into a guardrail.

The Workers’ Compensation Judge ruled that Kotler’s injuries were compensable. Although not precisely stated, the judge seemed to conclude that the accident occurred during the commission of a “special mission” for the employer. The judge stated that “the day and dangerous weather conditions during that commute were not normal.” The judge concluded that, because the employer had called Kotler to work when it was not part of his normal duties, and on a day when he would otherwise not have driven to or from work, the accident occurred as part of Kotler’s work duties.

On appeal, the target respondent, Safety National, contended that Kotler’s claim did not arise from work-related compensable injuries because the accident occurred while he was traveling home from his normal workplace. Kotler countered that the injuries were compensable because the accident occurred during a task that Kotler felt compelled to perform for the benefit of the employer, analogizing the circumstances of this case to the “special mission” exception to the normal rule that compensable injuries are those that occur at the employee’s work site. In response, Safety National argued that the special mission exception was inapplicable to extra job duties at the normal place of employment.

In the first part of its analysis, the Superior Court looked at the plain language of Section 36 and the premises rule. That section of the New Jersey Workers’ Compensation Act states:

Employment shall be deemed to commence when an employee arrives at the employer’s place of employment to report for work and shall terminate

when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. *N.J.S.A. 34:15-36*

The court noted that the legislature amended the Workers' Compensation Act in 1979 and eliminated many of the judicially-created exceptions by defining "employment" more restrictively. Here, since Kotler's injuries did not occur on the employer's premises, the court noted that compensability was precluded unless an exception to the premises rule, namely the "special mission" exception, was applicable.

The special mission exception is also found in Section 36 of the Workers' Compensation Act and allows for compensability of off-premises injuries if an employee is: (1) "required by the employer to be away from the employer's place of employment," and (2) the employee is "engaged in the direct performance of duties assigned or directed by the employer." *N.J.S.A. 34:15-36; Zelasko v. Refrigerated Food Express*, 608 A.2d 231, 234 (N.J. 1992). Although Kotler went to his regular place of employment, he made a novel argument—the hazardous conditions of the commute on that day rendered the task "sufficiently substantial to be viewed as an integral part of the service itself," and, therefore, compensable under the special mission exception.

The Appellate Division, in rejecting this expansion of the special mission exception, noted that, while pre-1979 case law permitted compensation for injuries suffered away from the work site while the employee was engaged in a special mission, the legislature intended to remove many of the exceptions to the going and coming rule and to define restrictively the retained exceptions. Therefore, since the plain language of Section 36 allows the special mission exception to be applied only to travel to and from off-premises locations for the benefit of the employer, the injuries Kotler sustained were not compensable. Kotler also made

other minor arguments regarding his feeling of "compulsion" to perform the work, as well as the right to safe egress. The court dismissed these arguments, without much fanfare, as inapplicable.

The Appellate Division, thus, reversed the finding of compensability, concluding that the premises rule had not been applied correctly. The deviation from a normal work schedule does not alter the basic restrictions of Section 36 regarding injuries that occur while the employee is at his place of employment or while away from the place of employment on a "special mission" on behalf of the employer. Further, injuries that occur while the employee is on a normal commute, even in bad weather, are not compensable as work-related injuries.

The court's decision confirms the longstanding principles behind both the premises rule and the special mission exception to that rule. This case also illustrates that the coming and going rule continues to be one of the most litigated issues in workers' compensation. Employers should be aware of the many rules and exceptions that surround a compensability determination, as a few simple words or instructions from an employer to an employee on when to arrive, where to park, what exit to take, etc., can have a huge impact on their workers' compensation exposure. If you have questions about your how your employee policies can effect a workers' compensation claim, please contact your counsel before an incident occurs.

"An ounce of prevention is worth a pound of cure."
- Benjamin Franklin



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