Latourette v. Workers" Compensation Appeals Board and Long Beach Community College District

54 Cal.App.4th 1411 (1997) | Cited 1 times | California Court of Appeal | May 14, 1997

Petitioner Sheila LaTourette seeks a review and annulment of an opinion and decision after reconsideration of respondent Workers' Compensation Appeals Board which issued on October 12, 1995. We grant the petition for writ of review and affirm the Workers' Compensation Appeals Board's decision.

CONTENTIONS

Petitioner frames the issues as: "(1) whether an employee supervisor is a commercial traveler when sent out of state to attend a seminar by his employer; and (2) whether injury caused by medical treatment to a commercial traveler in the course of employment also arose out of employment."

We answer the first question in the affirmative. However, under the specific facts of this case, we answer the second question in the negative.

FACTS AND PROCEDURAL BACKGROUND

Petitioner's husband, Mr. Elston LaTourette (decedent), was employed by the Long Beach Community College District as a supervising gardener. He had been employed by the college since December 1979. On October 21, 1990, while attending a seminar on behalf of his employer in Reno, Nevada, he suffered a severe heart attack. He died at age 56 during the fourth corrective surgery from a staph infection contracted at the hospital in Reno.

At the May 31, 1995, trial, petitioner attempted to show that work stress contributed to decedent's cardiac arrest on October 21, 1990. Petitioner testified that her husband was under stress because: (1) decedent's co-worker often failed to show up for work, resulting in decedent either doing the work himself or having to find someone to fill in; (2) decedent worked long hours, causing him to become fatigued; (3) decedent experienced stress trying to catch rabbits on the college campus during the evenings; (4) decedent was on call on weekends and frequently responded to weekend calls; (5) decedent was under stress trying to please his superiors; (6) decedent experienced stress because his superiors refused to allow him to use a college vehicle to drive to Reno and stay the night before the seminar; and (7) decedent was rushed on the day of his flight to Reno, which stress contributed to his heart attack.

According to respondent's evidence: (1) when decedent was promoted several months before his heart attack, he no longer had to deal with the absentee co-worker, and that in any event, the college

always found a replacement for the co-worker; (2) decedent requested the ten-hour, four-day work week to satisfy local air pollution reduction efforts; (3) the rabbit catching consisted of setting traps during the evening and was eventually turned over to outside contractors; (4) decedent's supervisor, John Didion, received the same calls as decedent during the weekend, and such calls were infrequent; (5) decedent had not submitted any overtime requests in 1990; (6) use of a college vehicle was prohibited on long trips; however, when decedent was informed that he could use his own car and stay over night prior to the seminar, he refused.

In addition, the voluminous records involving decedent's medical history revealed that decedent's problems with high blood pressure and cardiovascular disease preceded his employment with respondent. Further, according to the defense physician, Dr. Edmond Clinton, the medical records did not bear out the supposition that the development of decedent's cardiovascular disease process was due to job-related stress, as the records were devoid of any references to indicia such as angina, arrhythmia or myocardial infarction.

The Workers' Compensation Judge (WCJ) denied petitioner's workers' compensation claim on the ground that there was insufficient evidence of stress. Petitioner filed a motion for reconsideration on the grounds that: (1) decedent was a commercial traveler; (2) the medical treatment for the injury of October 21, 1990, was a reasonable expectation of the needs of a commercial traveler; and (3) the death was caused by the medical problems incurred in treating the cardiac condition.

The WCJ agreed that decedent was a commercial traveler, but found that there was insufficient evidence of stress caused by decedent's working conditions which contributed to decedent's industrial injury. The WCJ recommended that the petition for reconsideration be denied. The Workers' Compensation Appeals Board adopted and incorporated the WCJ's report and recommendation on petition for reconsideration, denying the petition for reconsideration.

Petitioner sought a writ of review, which was denied by this court. Petitioner petitioned the California Supreme Court which granted review and has now remanded the matter to this court with directions to vacate the denial and issue a writ of review.

Discussion

Under Labor Code section 3600, [1] among the ten "conditions of compensation" that must exist before an employer pays workers' compensation benefits are that the injured worker must be "performing service growing out of and incidental to his or her employment" and be "acting within the course of his or her employment." (§ 3600, subd. (a)(2).) Moreover, proximate cause must exist in that the employment must be a substantial contributing cause of the injury. (§ 3600, subd. (a)(3); Wiseman v. Industrial Acc. Com. (1956) 46 Cal. 2d 570, 572, 297 P.2d 649.)

"'As a rule commercial travelers may be regarded as acting in the course of their employment so long

as they are traveling in their employer's business, including the whole period of time between their starting from and returning to their place of business or home.' [Citation.]" (California C. I. Exch. v. Indus. Acc. Com. (1936) 5 Cal. 2d 185, 186, 53 P.2d 758.) The act of traveling, procuring food, and shelter are all considered incidents of employment, and thereby covered under workers' compensation insurance. (Dalgleish v. Holt (1952) 108 Cal. App. 2d 561, 566, 237 P.2d 553.)

Although an employee is labeled a commercial traveler, the conditions of section 3600 still apply. (Dalgleish v. Holt, supra, 108 Cal. App. 2d at pp. 565-566.) That is, "'the test for determining whether the [Workers'] Compensation Act is applicable to the claim of an injured employee excludes an injury which comes from a hazard to which the workman would be equally exposed apart from the employment.'" (Ibid.) Thus, in Dalgleish, the court stated that "the status of an employee as a traveling salesman does not change a course of action which is not within the scope of the employment to one that is." (Id., at p. 566.)

In IBM Corp. v. Workers' Comp. Appeals Bd. (1978) 77 Cal. App. 3d 279, 142 Cal. Rptr. 543, Division One determined that an employee's death from an automobile accident while on a weekend trip to visit relatives during the course of an out-of-town training program to be compensable under workers' compensation under the commercial traveler rule. Focusing its analysis on whether the weekend trip was within the course of employment, or a noncompensable "distinct departure on a personal errand," the court found that the weekend trip was a leisure time activity normally incident to an out-of-town temporary assignment, buttressed by the fact that his supervisor knew of the visit and encouraged it. (Id., at p. 283.)

Similarly, we agree with petitioner that decedent was acting within the course and scope of his employment when he was stricken with the heart attack while attending an out of town seminar on behalf of his employer. Therefore, he was a commercial traveler. [2] Petitioner, however, has abandoned her argument that work-induced stress led to the heart attack. Rather, she urges that the heart attack which decedent sustained did not cause his death; instead, the staph infection contracted at the hospital caused him to die. Accordingly, petitioner claims, decedent's need for medical attention was an incident of employment arising out of employment. Because petitioner's argument ignores the requirement of a causal connection between the injury and the employment, we interpret petitioner's argument as an attempt to superimpose a strict liability analysis upon the commercial traveler rule. We reject this attempt. (See Western Airlines v. Workers' Comp. Appeals Bd. (1984) 155 Cal. App. 3d 366, 371, 202 Cal. Rptr. 74 ["The cases cited do not stand for the proposition that injuries suffered by commercial travelers are compensable without regard to whether or not they arose out of the employment."].)

In California C. I. Exch. v. Indus. Acc. Com., supra, 5 Cal. 2d 185, the employee, a traveling salesman, stopped at a hotel for the night and left the heater on without opening a vent, consequently dying of carbon monoxide poisoning. At issue in that case was whether there was a causal connection between the acts done by the employee within the scope of his employment and his death. The court

concluded that there was such a connection because an employee might reasonably arrange for his comfort and convenience by using the heater; since an accident occurred out of his use of the convenience, the injury caused would be an injury arising out of employment. (Id., at p. 186.)

In Wiseman v. Industrial Acc. Com., supra, 46 Cal. 2d 570 at page 572, the court held that injuries caused by careless smoking in a hotel room while the employee was on a business trip were an incident of employment. That is, the injuries were "not so remotely connected with the employment that they do not arise out of it," because there is nothing unusual in the fact that a traveling employee may entertain guests in his hotel room who smoke. (Id., at pp. 573-574.)

In Leonard Van Stelle, Inc. v. Industrial Acc. Com. (1963) 59 Cal. 2d 836, 31 Cal. Rptr. 467, 382 P.2d 587, the court found a real estate agent who was injured in a car accident while returning from dinner with a companion who had accompanied her on an inspection of properties to be a commercial traveler. The employee's business trip "constituted at least a substantial factor in her total undertaking." (Id., at p. 840.) Therefore, her injuries arose out of the course and scope of her employment while she was performing service incidental to her employment. (Id., at p. 841.)

In contrast to the foregoing cases, the decedent did not actively participate in activities which led to his injury such as turning on a heater, entertaining a guest and smoking, or seeking a late night dinner. We cannot adopt petitioner's suggestion that all illnesses which manifest themselves during the course of a business trip and require medical attention necessarily arise out of employment. Had decedent been treated in the hospital while in his home town, the contraction of the staph infection could not, in itself, have led to compensation as an incident arising out of employment. The illness and subsequent treatment were not, unlike the situations in the cases above, reasonably incident to the employment. That is, we find that decedent's heart condition and subsequent medical treatment are conditions to which he would have been equally exposed outside of employment. (Dalgleish v. Holt, supra, 108 Cal. App. 2d 561, 566.) Our decision might be otherwise had decedent's travel required him to be in a geographic area that could not provide reasonable medical care to a cardiac patient. However, petitioner has provided no evidence to show that medical treatment in Reno for cardiac patients is patently substandard to that offered in Los Angeles.

Moreover, although petitioner has abandoned her theory on appeal that the need for treatment was a consequence of stress-induced heart disease which arose out of the employment, the evidence below strongly supports the WCJ and Workers' Compensation Appeals Board finding that decedent did not suffer sufficient work-related stress to establish that his heart attack and subsequent death arose out of employment. Petitioner has not shown a causal connection between the employment and the injury, and instead has relied on a strict liability argument, which we do not accept.

Accordingly, we affirm the Workers' Compensation Appeals Board's decision.

Disposition

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The Workers' Compensation Appeals Board's decision is affirmed..

NOTT, J.

We concur:

FUKUTO, Acting P.J.

ZEBROWSKI, J.

1. All further statutory references are to the Labor Code unless otherwise indicated.

2. We note that the WCAB found that decedent was not a commercial traveler, per se, because he was a supervisor attending a convention.