

JRP

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

BARBARA GIBBS,

Applicant

vs.

LOS ANGELES
UNIFIED SCHOOL DISTRICT,

Defendants.

CASE NO. 160210

FINDINGS AND ORDER

The above-entitled matter having been regularly submitted, the Honorable PAMELA W. FOUST, Workers' Compensation Judge, now finds and orders as follows:


FINDINGS OF FACT

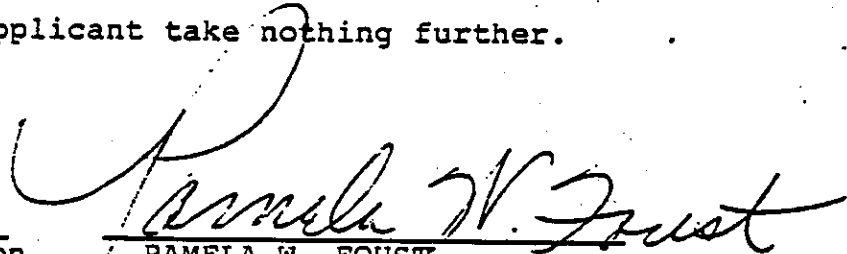
1. Applicant did not sustain injury in the course of her employment.
2. Applicant actually, reasonably and necessarily incurred costs for the purpose of proving a contested claim in connection with the liens of Dr. Roback to be adjusted in accordance Labor Code Sections 4624 and 4626.
3. There being no fund against which a lien for attorney fees may be assessed, none is awarded.

ORDER

IT IS ORDERED that applicant take nothing further.

DATED: DEC 23 1993
Filed and served by mail on parties and interested lien claimants on the above date.

By: 
Martha Kabba


PAMELA W. FOUST
Workers' Compensation Judge

CASE NO. MON 160210

BARBARA GIBBS

v.

LOS ANGELES
UNIFIED SCHOOL DISTRICT

WORKERS' COMPENSATION JUDGE:

PAMELA W. FOUST

DATE OF INJURY:

MAY 29, 1993

OPINION ON DECISION

INJURY AOE/COE

The facts in this matter were not substantially in dispute. Applicant worked at a public school which had a parking lot that was inadequate to accommodate the automobiles of all of the employees driving to work. Applicant did not testify, but her deposition transcript was taken into testimony and she indicated on p. 62, that a Mrs. Field had said that "if there's no parking spaces in the lot you parked on the street". The WCJ presumes that Mrs. Field was either the principal or some type of supervisor. Applicant was injured in a trip and fall incident while walking from the school to her car.

The Going and Coming Rule will bar compensation for injuries occurring before the employee has physically reached the work premises and after he has left. Normally, an injury sustained between the place of employment and a car parked on a public street is not compensable since the employee is not in the course of his employment. (General Insurance Co. v. WCAB (Chairez) 41 CCC 162). Thus, applicant would have to show that her situation fell within one of the exceptions to the Going and Coming Rule.

There is no evidence that there was anything different about applicant's work activities or hours on the date of the injury. She further was not involved in a special errand for the employer and if the risk to her of tripping and falling on the public street was any different from the risk presented to the general public, these facts were not brought out.

The only factor that would distinguish the facts of this case from those in Chairez is the fact that the employer apparently told her to park on the public street if the parking lot was full. The only case dealing with a similar situation is the writ denied case of L.A.U.S.D. v. WCAB (Bauer) 51 CCC 146 in which the employee was struck by a car in a crosswalk after the principle had told the staff to use the crosswalk in order to set an example for the children. The panel of Commissioners found sufficient employer control to constitute an exception to the Going and Coming Rule.

Although these cases are factually similar, there are some important differences. Applicant testified in her deposition that she was not directed to park in any particular street and, as a matter of fact, did park in different locations. Thus, the route that she would have to take between the school and the car would vary as opposed to Ms. Bauer's situation in which she had to approach the school on a designated path.

The difficulty in finding this case to present an exception to the Going and Coming Rule is that such a finding would extend the employer's premises for the purpose of industrial liability in each and every case in which the employer did not provide a parking space on the actual premises. If the employer had directed her to park on a particular street, this might have been indicative of sufficient employer control to extend the premises, just as it was in Bauer where the employer directed the portion of the route in which she was injured.


Here, applicant had to reach the school somehow and the employer had no control over the particular route she took. In fact, it is improbable that parking on the street was an actual requirement of employment, but rather an observation that this was the only option available to an employee who wanted to drive to work and arrived at a time that the lot was full. If an employee did not own a car and was told he could walk to the bus stop, this would not mean that an injury sustained en route would be compensable because in each and every such case, employer control would be then extended to the bus stop.

Application of the Going and Coming Rule often has harsh results. However, a finding of compensability under these facts would be contrary to the established body of case law, even construing the facts in a light most favorable to the employee.

Based on the foregoing, it is found that applicant did not sustain injury in the course of her employment.

MEDICAL-LEGAL COSTS

Applicant actually, reasonably and necessarily incurred costs for the purpose proving a contested claim in connection with the lien of Dr. Roback which is payable by defendant in an amount to be adjusted in accordance with Labor Code Sections 4624 and 4626.


PAMELA W. FOUST
Workers' Compensation Judge