

"Coming and Going Rule" Revisited

Generally, the "Coming and Going Rule" precludes an employee's entitlement to protections under the Pennsylvania Workers' Compensation Act if he or she sustains an injury in a commute to or from work. However, there are a series of exceptions to this rule, which include if "Special Circumstances" are in play. For instance, "Special Circumstances" have rendered compensable an injury sustained during a commute where: (1) the employee is requested by the employer to come in; (2) the request is for the convenience of the employer or in furtherance of its business; and (3) the trip is not simply for the convenience of the employee. The Commonwealth Court of Pennsylvania recently decided a case which involved this exception to the "Coming and Going Rule." In that case, the employee, a maintenance director for a senior citizen community, was injured in a motor vehicle accident (MVA) which occurred on his way into work to repair security cameras.

The employer had an express "on call" policy, which provided for additional compensation to employees who responded to after-hours maintenance problems. In the event a call was placed, and it was necessary for the employee to report to the workplace, it was considered work time from the point the employee begins responding to the call until the work is done and the employee arrives home or at whatever activity or location where the call was received. On the date of the accident, the employee testified he was not feeling well and intended to take a sick day. However, he received a call from the employer's executive director, who asked if he was available to address an issue with the security cameras which were not working properly. The employee responded by indicating he was not feeling well, however, he felt obligated to go into work in order to fix the cameras. While in route to work, the employee became nauseous, which caused him to veer off the road and strike a telephone pole. He sustained various injuries in this MVA.

The Workers' Compensation Judge found in the employee's favor and determined the claim was not excluded by the "Coming and Going Rule," which was appealed by the employer. However, the Workers' Compensation Appeal Board (WCAB) rejected the employer's appeal finding "Special Circumstances" applied which caused the employee's MVA to be within the course and scope of his employment. In turn, the employer filed a Petition for Review of the WCAB decision to the Commonwealth Court and sought a reversal. It argued the employee failed to present competent evidence sufficient to sustain his burden of proving he was injured within the course and scope of his employment.

The Commonwealth Court assessed the "Coming and Going Rule" and affirmed the applicability of the "Special Circumstances" exception. It reasoned that the employee drove into work to rectify a problem he would not have otherwise addressed on account of his illness which was in accordance with the direction from his supervisor. The Court found the employee was "on the clock" from the moment he picked up the phone at home and fielded his supervisor's specific request to fix the security cameras.

Overall, this case reminds us that the exceptions to the "Coming and Going Rule" involve a very fact intensive analysis, which varies from case to case. Parties need to be cognizant of the various exceptions and their applicability depending on the specific fact pattern at issue.