

Special Mission Exception and Course of Employment

The general rule in workers' compensation is that an accident will be compensable when occurring at the employee's place of employment or in an area under the control of the employer, if the employee is not at the place of employment. The workers' compensation statute does provide an exception to this general rule, the "special mission exception." Under this exception, "when the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer." N.J.S.A 34:15-36.

The "special mission exception" was the recent focus of an unpublished decision by the Appellate Division, *Liu v. 4D Security Solutions, Inc.* In *Liu*, the employee was employed as an engineer for the employer at an army base in the United Arab Emirates. His job duties included testing the company's hardware and software at the army base. The employer paid for the employee's travel to the UAE as well as hotel, meals and expenses. The employee was also provided with a company-issued Blackberry and computer.

On the date of injury, the employee decided to go to a museum to "understand the people and know the culture" believing this would help him with his work in the UAE. This trip was not during the typical Sunday to Thursday work week, but the employee still carried his company-issued Blackberry. The employee fell while descending a ladder in the museum. He ultimately filed a claim petition for his injuries. The employee appealed the decision from the Judge of compensation which found his injuries did not arise during the course of his employment. The Appellate Division affirmed.

In reaching this decision, both the Judge of compensation and the Appellate Division found the "special mission exception" did not apply. Specifically, the courts looked to whether the employee was "engaged in the direct performance of duties assigned or directed by the employer" at the time of his accident. In this matter, the employee was at the museum on his free time sightseeing. Even though the employee was required to be in the UAE by his employer, he was not required to visit the museum by his employer and his visit was in no way directly related to his job duties of testing the company's hardware and software. The employee did testify he was required to respond to inquiries from company employees in the United States whenever an inquiry was made which is why he carried his company-issued Blackberry. However, his own testimony before the Judge of compensation noted he did not recall if he was contacted on the date of accident. Further, the Courts found the employee was not constantly working nor did his possession of the Blackberry intrude into his free time on the date of accident.

Both Courts found this case analogous to *Walsh v. Ultimate Corp.* In that case, the employee was sent to Australia for a long-term assignment and was encouraged by his supervisor to sightsee in hopes that the employee would accept a full time position in Australia. The employee left his place of employment, with work to do at his hotel that evening and planned to sight see the next day. The employee was killed in an automobile accident. The Court in *Walsh* found a new place of employment was established in Australia, however, the employee was in no way directed to his specific sightseeing location and he was not on duty at the time of the accident.

As the employee in *Liu* failed to succeed in arguing the "special mission exception" applied, he attempted to argue the "mutual benefit doctrine" applied. Even though the Appellate Division found the employee failed to assert this doctrine before the Judge, it was still briefly addressed.

Under the "mutual benefit doctrine" if the employee is engaged in an activity that provides a clear and substantial benefit to the employer, it can be concluded the accident arose in the course of employment.

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The Appellate Division quickly discounted this argument as there was no benefit to the employer from the employee's visit to the museum. It was the employee's own belief that his visit would assist him with his work while in the country. This is not a clear and substantial benefit to the employer and thus the accident did not arise in the course of employment under this doctrine.

Liu demonstrates the "special mission exception" will be based on the specific facts of a given case. Those facts must support that the employee was directly performing his or her duties, even though away from the given place of employment at the time of their accident. Otherwise, the employee's injuries will not occur in the course of employment.

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