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## Long Detour to Restaurant for Lunch Post Business Meeting Found Not Compensable

In a recent unpublished Appellate Court Decision, Mackoff v. New Brunswick Saw Service, the court examined a deviation by a petitioner to obtain lunch after a client meeting. The petitioner was employed by New Brunswick Saw Services as a salesperson and account manager, mainly working from home. As part of his job, he traveled to client businesses to conduct meetings and service calls.

The petitioner was involved in a motor vehicle accident. On the morning of the accident, he left his home in Camden, New Jersey, and drove to a client meeting in West Caldwell, New Jersey. His accident occurred after his meeting when he detoured to his favorite hot dog place, the Galloping Hill Inn in Kenilworth, for lunch.

The petitioner filed a Claim Petition alleging injury to his head, neck, and back from the accident. The respondent denied the claim, and the petitioner subsequently filed a motion for medical and temporary disability benefits.

The petitioner testified before The Honorable Ingrid French in June 2019. On direct examination, he testified he decided to have lunch before driving to his office at some point, which he had not been to in some time. He chose the Galloping Hill Inn for lunch as it was a “nostalgia place” and he went there forever. The petitioner testified he intended to go for lunch at that time. At the prodding of his attorney, the petitioner claimed the restaurant was a potential customer as they had slicers, which is the type of equipment his employer sold and serviced. However, on cross-examination, the petitioner acknowledged the restaurant was never a prospected location, was an hour away from where he had finished his meeting, and he had other customers in the area but did not arrange meetings with them. His sole intention was to have lunch.

On May 5, 2020, Judge French denied the petitioner’s motion and dismissed the claim as the petitioner failed to establish a work-related accident. The Judge found the petitioner’s primary purpose was not to obtain the restaurant as a customer; his primary purpose was personal in having lunch. The Judge found the petitioner had completed his workday and was on his way to lunch when the accident occurred.

The petitioner appealed, claiming his workday was not complete at the time of the accident and his going to the restaurant was nothing more than a minor deviation in his schedule. The latter claim was not raised before the workers’ compensation judge.

The Appellate Division affirmed the dismissal of the case. The court noted the definition of employment under the statute was “multi-faceted and included situations in which the employee is physically away from the employer’s premise, but nevertheless is ‘engaged in the direct performance of duties assigned or directed by the employer.’” In this case, the petitioner’s drive to the Galloping Hill Inn was about an hour from his meeting in West Caldwell, and his drive from the Galloping Hill Inn to his office would have been two hours out of his way. The court noted the petitioner could not unequivocally state in his testimony that the restaurant was intended to be a prospective client on his visit.

With regards to his second argument that his trip to the Galloping Hill Inn was a minor deviation, the court noted even if his intended purpose was to go to his office after, his detour to the Galloping Hill Inn was not a minor deviation. The court looked to Jumpp v. City of Ventnor to note that the petitioner’s activity would not have been compensable even if done by an on-premises employee. The court noted the petitioner’s travel to the Galloping Hill Inn was an hour from where his client meeting ended, therefore not minor in nature.

This decision maintains that when the primary purpose of an injured worker’s trip is personal and not work-

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related, the court will find the injury to not be compensable. Such key information is obtained through fact investigation and ultimately, the testimony of the injured worker. It should be noted that, ordinarily, a stop for lunch while a traveling employee is on the road is not considered a deviation but covered under the Personal Comfort Doctrine. The facts, in this case, stretched the concept of coverage for an employee who travels for work beyond that which the court would consider as still in the course of employment.