The Dangers of Traveling to and from Work: A Brief Reflection on the "Coming and Going" Rule

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Despite the impending arrival of spring on the calendar, winter continues to rear its ugly head here in Ohio. As a native to the Midwest, I have bitterly accepted this six-month perdition. Every October (November, if we are lucky), Ohio begins its transition into a barren wasteland covered in snow and palpable gloom, and does not emerge into spring for what seems like a lifetime. Fingertips freeze, teeth chatter, and—you guessed it—people fall victim to patches of ice. It is during this time that, as workers' compensation attorneys, we may witness a spike in claims of individuals who were hurt walking to or from a place of employment, and a close examination of the circumstances of the injury is paramount to a successful claim allowance. I myself was recently walking through my firm parking lot on a balmy 10-degree day, and slipped on what I thought could be a trusted piece of pavement. I promptly went down to one knee and spent the afternoon at hearings explaining to my esteemed colleagues that, no, I did not need their representation and no, I would not be filing a claim against my employer (unless of course damaged pride is considered a compensable injury) (I checked—it's not).

Fortunately, my injuries were mostly superficial and in no need of treatment or time off work. Other individuals, however, may not be as fortunate. A fall on the walk to or from work can easily lead to sprained and torn muscles, broken bones, or worse injuries that require extensive follow-up care and attention. The risk is certainly heightened during the winter when individuals navigate unsalted lots and sidewalks, but cracked pavement, uneven surfaces, or other dangerous conditions that employees face when making the odyssey from their car to place of employment (the "ingress" to work, if you will) can result in injuries as well. To what extent are these claims covered?

As a freshly minted attorney, I recently had my first exposure to this type of case. A new client of mine parked on a public street and traveled through an adjacent parking lot to get to the entrance of his job. In this lot, he tripped over uneven pavement and tore the muscles in his shoulder from the fall. I considered the claim to be fairly innocuous until I saw the employer had submitted in the file a statement that it did not own, operate, or control the parking lot where he fell. This, of course, raised a red flag that I had overlooked a potential defense that would be argued at the impending hearing on the claim allowance. Thus, I poured over case law and the OAJ List Serv (a godsend), and relentlessly nagged fellow comp attorneys for information concerning injuries that are sustained when an individual is traveling to or from a fixed placed of employment. I very quickly gathered that this area of workers' compensation law is about as grey as a mid-February sky in Ohio. As much as I wanted a definitive answer to whether my client's claim was compensable, the case and statutory law simply failed to deliver.

Under workers' compensation laws in Ohio, an injury is only compensable if it occurs "in the course, and arising out of" one's employment. R.C. 4123.01(C). Thus, an injury that is sustained when an employee is going to or coming from his or her fixed place of employment does not meet the requisite standard for coverage because said injury was not sustained "in the course of" employment. This rule only applies to individuals who work at a fixed location of employment; in other words, a transient employee who travels from location to location as part of his or her employment (e.g., a door-to-door salesperson) would not be precluded from coverage if he or she were to be injured while traveling to the location of the next job responsibility.

The "coming and going" rule, then, would seemingly exclude my aforementioned client from coverage under workers' compensation. Fortunately, the law is rarely absolute, and the Supreme Court of Ohio has established several exceptions.

First, if an employee is within his or her "zone of employment" when the injury occurs, then that injury may be compensable. The zone of employment is defined as "the place of employment and the area thereabout, including the means of ingress thereto and egress therefrom, under control of the employer." *Merz v. Indus. Comm.*, 143 Ohio St. 36, 15 N.E.2d 632 (1938).

Second is the "special hazard" exception. A special hazard exists when, but for the employment, the injured worker would not have found him or herself at the location where the injury occurred, and the risk of injury is "distinctive in nature or quantitively greater than the risk common to the public." *MTD Products, Inc. v. Robatin*, 61 Ohio St.3d 66, 572 N.E.2d 661 (1990).

The third and final exception is somewhat of a grab-bag: a hearing officer may consider the "totality of the circumstances" to determine if the injury should be covered. This includes examining the proximity of the scene of the accident to the place of employment, the degree of control the employer had over the scene of the accident, and the benefit the employer received from the employee's presence at the scene of the accident. *Id.*

Ultimately, I have provided a somewhat truncated explanation of Ohio laws regarding injuries sustained on the way to or from work, one that reflects only my own recent experience. A full explanation of these types of cases would require far more than what a short article can offer. And as I stated before, injuries sustained in this manner are a grey area of workers' compensation law, and a favorable or unfavorable outcome for your client is very heavily dependent on the facts of the case. What I found, however, was that much of the case law I encountered focused heavily on *choice*. Did the client have a choice in where he or she parked? Was there a route available to that individual that was not taken and would have resulted in a

safe trip into the building? Were there several entrances into the building from which to choose? The answers to these questions are key in successfully arguing this type of case.

For my new client, I argued an Eighth District case called *Meszaros v. Legal News Publishing Co.* in explaining that, while he did park on a public street and the lot was not owned or operated by the company for which he worked, he had no choice but to traverse through the lot to get to his building. There were few entrances for his selection and the one he chose was the most reasonable, as it was closest to his office. *Meszaros* stands for the proposition that, under the "zone of employment" exception, an injury is compensable if the parking lot is under the employer's control and the street is the sole access route to the place of employment. *Meszaros v. Legal News Publishing Co.,* 138 Ohio App.3d 645, 742 N.E.2d 158 (8th Dist. 2000). I paralleled the lot where my client was injured with the public street in *Meszaros*, and argued that because the lot provided the sole means of ingress to the building, the injury should be covered. Fortunately, the hearing officer agreed.

In conclusion, injuries sustained on the way to work require a close examination and review of the controlling statute, relevant case law, but most importantly, the facts of the case and your client's testimony. And it is the latter factor that requires thorough and careful pre-hearing preparation with your client. Had my client not been able to clearly articulate the layout of the premises and the route he took to get to his office, I doubt the hearing officer would have been persuaded that he was in the zone of his employment when he fell, and the exception would not have applied. During a season in which employees are at risk of falling on the way to work—let my own slip and fall serve as an example—it is crucial to familiarize oneself with these types of cases and understand that, even if an employee is not at the fixed site of employment when he or she is hurt, an injury may nonetheless be compensable—and oftentimes is!

Bio:

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Quote:

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