IN THE COURT OF APPEALS OF IOWA

No. 3-257 / 92-1250

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CLERK SUPREME COURT

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SCOTT LAUGHLIN,

Appellant,

vs.

WATERLOO CONSTRUCTION COMPANY, INC.,

Appellee.

Appeal from the Iowa District Court for Black Hawk County, Forest E. Eastman, Senior Judge.

Scott Laughlin, a workers' compensation claimant, appeals a district court ruling affirming the industrial commissioner's decision granting the employer's motion for summary judgment. **AFFIRMED.**

Jay P. Roberts of Beecher, Rathert, Roberts, Field, Fister, Walker & Morris, Waterloo, for appellant.

Mark W. Fransdal and David R. Mason of Redfern, Mason, Dieter, Larsen & Moore, Cedar Falls, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

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SCHLEGEL, J.

Scott Laughlin, a workers' compensation claimant, appeals a district court ruling affirming the industrial commissioner's decision granting the employer's motion for summary judgment. The industrial commissioner concluded Laughlin failed to prove he sustained an injury in the course of his employment. Laughlin contends summary judgment was improper because a fact question existed regarding the issue of whether or not the employer paid for Laughlin's transportation expenses. Laughlin argues he was lured into accepting employment by the guarantee of extensive overtime which was offered to cover his expenses. He argues the coming and going rule should be expanded to permit compensation for those employees who are lured into accepting a position due to lucrative overtime hours.

On September 8, 1987, Scott Laughlin was injured in a motor vehicle accident while driving his own car. At that time, Laughlin was an employee of Waterloo Construction Company, Inc., (hereafter "Waterloo Construction"). At the time of the injury, Laughlin was working for Waterloo Construction in the vicinity of DeWitt, Iowa, at a location approximately 125 miles from his home in Waterloo, Iowa. Laughlin and two other employees of Waterloo Construction lived in or around Waterloo. During those weekends when the three men would return to their homes, they traveled together. The three men rented a mobile home in the

vicinity of DeWitt and lived together near the job site. During the week, the men remained in DeWitt, commuting to the job site from the mobile home.

On September 8, 1987, the three men, having spent the Labor Day weekend in Waterloo with their families, began traveling to DeWitt at approximately four o'clock in the morning to return to work. While en route, the men were involved in an automobile accident in which Laughlin was seriously injured. As a result of the accident and the injuries suffered, Laughlin filed a claim for workers' compensation benefits. The employer filed a motion for summary judgment.

Following a hearing, a deputy industrial commissioner granted summary judgment, holding the employer had achieved its burden of showing the nonexistence of a genuine issue of material fact. Accordingly, the deputy held the employer was entitled to summary judgment as a matter of law, "specifically, because claimant's accident was not incurred in a place where defendant's business required his presence." The deputy further stated: "The employer received no benefit from having claimant drive from Waterloo to DeWitt on September 8, 1987. It is also clear that claimant received no additional compensation for the hours or mileage expended in driving from Waterloo to DeWitt on September 8, 1987."

The deputy also found that Laughlin's travel on September 8 was neither expected nor required by the

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employer. In addition, the deputy found that the overtime income received by the claimant constituted compensation for hours worked at the job site only and was not contingent upon the claimant's commute from Waterloo to DeWitt. The industrial commissioner affirmed the deputy's decision and adopted it as the final agency action in the case. Laughlin sought judicial review. The district court affirmed the industrial commissioner's decision finding that the decision was supported by substantial evidence and the industrial commissioner's application of the law was correct. Laughlin appeals. We affirm.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is to correct errors of law made by the district court. Foods, Inc. v. Iowa Civil Rights Comm'n, 318 N.W.2d 162, 164-65 (Iowa 1982). The review function of the district court under section 17A.19 is to correct errors of law which are specified in section 17A.19(8). When we review decisions of the district court which were rendered in its capacity as an appellate body under section 17A.19, the issue for our determination is whether the district court correctly applied the law. Id. at 165. In order to make that determination, we apply the standards of section 17A.19(8) to the agency action to determine whether this court's conclusions are the same as those of the district court. Jackson County Pub. Hosp. v. Public Employment Relations Bd., 280 N.W.2d 426, 429-30 (Iowa 1979).

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Summary judgment is appropriate only if there exists no genuine issue of material fact. Farm Bureau Mut. Ins. Co. v. Milne, 424 N.W.2d 422, 423 (Iowa 1988). The moving party has the burden to show the nonexistence of a material fact. Id. The evidence must be viewed in the light most favorable to the nonmoving party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986). This procedure is functionally akin to a directed verdict, and every legitimate inference that reasonably can be deduced from the evidence should be afforded the nonmoving party. Id. A fact issue is generated if reasonable minds can differ on how the issue should be resolved. Id. If the conflict in the record consists only of legal consequences flowing from undisputed facts, entry of summary judgment is proper. Milne, 424 N.W.2d at 423.

Laughlin argues summary judgment was improper because a fact question existed as to whether or not Waterloo Construction "in some way" paid for his transportation expenses. Laughlin contends that he informed the woman who hired him for the job that he could not justify traveling to DeWitt for the amount of pay being offered. Laughlin claims the hiring agent assured him that the opportunity to work overtime hours would be abundant, and that the amount of money Laughlin would derive from his overtime hours would make up for the additional expenses.

Laughlin interprets that assurance by the hiring agent as an inducing offer of compensation for travel and living

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expenses in DeWitt. According to that interpretation, Laughlin urges us to expand the coming and going rule to include employees who accept employment after being told that the opportunity to work overtime hours will compensate the employee for the extra expenses involved due to travel and other living arrangements.

In Frost v. S.S. Kresge Co., 299 N.W.2d 646, 648 (Iowa 1980), the court explained the coming and going rule by stating:

> The general rule is that, absent special circumstances, an employee is not entitled to compensation for injuries occurring off of the employer's premises on the way to and from work. [Citations omitted.]

The rule applies to the requirement that the injury occur "in the course of" the employment. Id. The rule seeks to measure the work connection of the incident as to time, place, and activity. Id.

The coming and going rule has been the general rule in Iowa for many years. In Otto v. Independent School District, 237 Iowa 991, 23 N.W.2d 915 (1946), the supreme court held that a janitor, whose injury occurred when he slipped and fell on his way to work to unlock the school building, did not sustain a compensable injury. The court said:

> Unless it can be fairly said the employee, while going to or from his regular place of work, is engaged in a place where his employer's business requires his presence, his injury en route is not compensable. It does not arise out of and in the course of his employment.

Id. at 993, 23 N.W.2d at 916.

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The claimant urges us to expand the coming and going rule and indicates his belief that the Iowa Supreme Court has expanded the rule in several cases. Specifically, he directs us to Pribyl v. Standard Electric Co., 246 Iowa 333, 67 N.W.2d 438 (Iowa 1954). In Pribyl, a union contract required the employer to furnish employees with transportation for jobs outside Linn County. The employer agreed to pay the employees on a mileage basis when they used their own cars. The claimant in Pribyl was killed while driving his own car to the job site. The supreme court held the injury arose in the course of the employment. We find Pribyl to be distinguishable from the present case on its facts. We do not agree that Pribyl provides a guide for the expansion of the coming and going rule, as advocated by the claimant.

In addition, both parties cite Medical Associates Clinic, P.C. v. First National Bank, 440 N.W.2d 374 (Iowa 1989). In that case, a physician who was employed by a hospital was killed in an automobile accident while traveling from his home to the hospital. The doctor had been on call all night and remained on call as he drove to the hospital. The supreme court found the doctor was pursuing his employment at the time of his death and was not merely transporting himself to or from work. Under these facts, the court found an exception to the coming and going rule and permitted workers' compensation benefits. As these facts clearly indicate, Medical Associates Clinic is clearly distinguishable from the instant case.

We are unable to find an authority treating the precise factual scenario posed by the present case. We find the instant case to be more analogous to Otto than to Medical Associates Clinic. We do not believe a genuine issue of material fact exists in the present case as to whether the overtime compensation promised to claimant was intended as compensation for travel to and from work and Laughlin's home in Waterloo.

No dispute exists regarding the facts as presented; the facts are subject to a determination of the legal issue involved. Given these facts, we hold the claimant's injuries in the automobile accident which occurred during his trip from home to work were not sustained in the course of his employment. Accordingly, the injuries are not compensable under the workers' compensation statute.

The decisions of the industrial commissioner and the district court are affirmed.

AFFIRMED.