



***INJURED WHILE WORKING
FROM HOME?
IS IT COMPENSABLE?***

REMININGER WORKERS' COMPENSATION LUNCH & LEARN SERIES

REMINGER.

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Scenario #1: Trip & Fall

Company X gave every employee an allowance to purchase ergonomic desk, chairs etc. to create a safe workspace. Many employers are not in a position to do so. What happens when an employee trips and falls in their home while telecommuting? Employee trips over extension cords run to/from outlet to dining room table which has become a makeshift office? Secondly, what happens if the Plaintiff alleges a repetitive trauma from using her son's computer keyboard while working?



OH Perspective - Statutes

- ORC 4123.01 (C) "injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of and arising out of, the employee's employment.

OH Case Law

The Ohio courts have considered this issue numerous times.

- The test of the right to participate in the workers' compensation fund is not whether there was any fault or neglect on the part of the employer or his employees, but whether a "causal connection" exists between an employee's injury and his employment either through the activities, the conditions, or the environment of the employment.

Bralley v. Daugherty (1980) 61 Ohio St.2d 302.

OH Case Law

The *Bralley* case was considered and further explained by the *Lord* decision in 1981.

There must be sufficient “causal connection” between an injury and employment and this depends on a totality of factors. A 3-prong test was outlined as relevant to consideration of the causal connection.

1. Proximity of scene to place of employment.
2. Control over the scene by the employer.
3. Benefit employer received by employee’s presence at scene.

Lord v. Daugherty (1981) 66 Ohio St.2d 441.

OH Case law

The *Lord* case and ORC 4123.01 was addressed by the Ohio Supreme Court in *Fisher v. Mayfield* 49 Ohio St.3d 275.

Being in the course of and arising out of employment is required for a compensable injury. Since the phrase is conjunctive in nature both prongs must be satisfied. Thus there is a need for analysis of distinct facts. This is because workers' compensation cases are, to a large extent, very fact specific. No one test or analysis can be said to apply to each and every factual possibility. Nor can only one factor be considered controlling, rather, a flexible and analytically sound approach to these cases is preferable, otherwise, the application of hard and fast rules can lead to unsound and unfair results.

OH Perspective – Scenario #1

- The initial answer is "it depends".
- What was the activity being performed when the trip occurred?
 - An answer indicating working can satisfy "in the course of".
- Now the "arising out of" prongs are considered.
 - 1. Proximity of scene to place of employment.
 - 2. Control over the scene by the employer.
 - 3. Benefit employer received by employee's presence at scene.
- Tripping over the cord likely fails #2.
- Repetitive trauma is a medical analysis whether telecommute or not.

IN Perspective for Scenario #1

- Permission to from home TIP: Create a policy
- Guidelines for safe environment TIP: Can assist but watch for the rabbit hole
- Can that burden truly be met? TIP: Monitor activities
- Are the accidents “unexplained?” TIP: Communication with workers

IN Perspective on Cumulative Trauma

An injury is accidental under the Worker's Compensation Act when unexpected consequences of usual exertion or exposure of particular employee's job *Four Star Fabricators v. Barrett*, 638 N.E.2d 792 (Ind. App. 1994).

Consideration also for "up and above" usual exertion to tie causation as well

Medical Evidence

KY Perspective – Scenario #1

- General Overview: This would be addressed under the “Going and Coming” rule. Kentucky generally holds that when an employee is injured while traveling to or from work it is not within the scope of employment.
- Exceptions to this rule include:
 - 1) Traveling employee exception
 - 2) Service to employer exception
 - 3) Employer conveyance exception
- All deal with the element of “control” over the employee and if the employee is providing a benefit to the employer.

KY Perspective Scenario #1

Operating Premises Rule

- Once the employee reaches the employer's operating premises, he comes within the protection of the statute
- This can extend to parking lots and sidewalks surrounding employer's premises, again depending on level of control
- Case by Case basis depending on who maintains or controls

KY Perspective Scenario #1

Personal Comfort Doctrine

- Employee steps away momentarily to minister to her own personal comfort
- Momentary smoke or snack break = compensable
- Unpaid off the clock lunch break off of operating premises = non-compensable

Substantial Deviation Rule

Substantial Departure from otherwise work-related mission

KY Perspective Scenario #1

Application to Hypothetical

Does the employee's home become "operating premises"?

Court has not accepted a blanket operating premises rule. Case by case basis determining extent to which employer exercise authority during "break".

Questions to consider:

- 1) Taking break or clocked out?
- 2) Length of Break?
- 3) Benefit to employer?
- 4) Permission to conduct particular activity?
- 5) Substantial Deviation:
- 6) Hazard flowed from employment? Expressly prohibited?
- 7) Motive other than personal comfort?

KY Perspective Scenario #1

Cumulative Trauma while using son's keyboard

Assuming that it can be medically proven that there was Cumulative Trauma caused by work activity:

In scope and course of employment?

Benefit to the employer?

Control by employer?

Scenario #2: Exercise

What happens if an employee goes for a run mid-morning, has Air pods in to listen to music and also the ability to take work calls if necessary and is struck by a car?



KY Perspective Scenario #2

Analysis

Was he on operating premises?

Had he temporarily abandoned his job?

Unreasonable route to get to destination?

Was the employee on a paid break or clocked out during run?

Was the employer exercising control over the employee's activities?

Did the employer benefit from this activity (can also be in the form of morale or better work force)?

Was the activity a substantial deviation from work?

Did route expose to hazard that was prohibited or law or employer?

OH Perspective – Scenario #2

- The act of going on a run likely fails the "in the course of" element.
- Assuming the person is on an active business call I do not believe the person can meet any of the three prongs of proximity, control nor benefit.
- The employee was placed at no greater risk by his employment, of being struck by a car, than someone in the general public who was also on a run.

IN Perceptive on Scenario #2

- Break/Lunch Periods
- Coming and Going Rule
- Recreational Activities

Incidental Acts

- Such acts as were necessary to the life, comfort and convenience of the workman while at work, though personal to himself and not technically acts of service, were incidental to the service; and an accident occurring in the performance of such acts was deemed to have arisen out of the employment. C. & E. Trucking Corp. v. Stahl, 135 Ind. App. 600, 181 N.E.2d 21, 1962 Ind. App. LEXIS 260 (Ind. Ct. App. 1962).
- Extent of Deviation- furtherance of company business or goodwill; length or how far removed from "workplace"

IN Scenario # 2

- Extent of Deviation- furtherance of company business or goodwill; length or how far removed from “workplace”
- Irony: Are we applying a travelling employee standard to our employee who is working from home?
- Consider: Public street, permitted activity, employer ability to control
- Essential Causal Connection-Plaintiff’s burden of proof

Scenario #3: Cooking

What if an employee "clocks in" on company website, answers a few emails and then drops a cast iron pan on his foot while making breakfast for him and his son?



KY Perspective Scenario #3

Analysis

- Was she on operating premises?
- Had she temporarily abandoned her job?
- Was the employee on a paid break or clocked out during run?
- If on break, how long?
- Was the employer exercising control over the employee's activities?
- Did the employer benefit from this activity (think not just productivity wise but also happy employee, happy workplace)?
- The fact that the injury occurred because the worker was ministering to his own comfort and convenience while at work should not render the resulting disability non-compensable.

IN Perspective Scenario #3

- Incidental Acts: comforts revisited
- Extent of Deviation
- What parameters are set for remote workers? Alternatives in place?
- Bars to compensation: Horseplay

IN Perspective – Scenario #3

- In Indiana, a Claimant must prove both that an she was injured in an accident that is “arising out of” and “in the course of” the employment.
- The Claimant must prove beyond a preponderance of the evidence each and every element of her claim to satisfy the burden of proof requirement for an injury

IN Perspective – Scenario #3

- The “arising out of” test requires a causal connection between the employment and the injury
- When considering causal connection, various categories of Risk:
 - Personal Risk-not compensable
 - Employment Risk-compensable as injuries caused by employment risk
 - Neutral Risk-personal element and employment element caused injury

IN Perspective – Scenario #3

- Furtherance of a business purpose?
- Injuries can occur out of normal work hours and outside of employment premises.
- Can we apply any Affirmative Defenses?

OH Perspective – Scenario #3

- The analysis remains the same.
- In this case once the employee departed from answering emails and begins an unrelated task of making breakfast for him/family, he has departed from being "in the course" and his activities cannot "arise from" his employment.

Tips to Mitigate Risk

- Communication and Supervision
- Information and Resources
- Establish Rules of Engagement

- MAKE A PLAN:
 - Daily check ins
 - Various forms of tech for different comfort levels
 - Establish Rules of Engagement
 - Support to minimize stress

QUESTIONS?

Next Lunch N'
Learn Webinar
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