

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMPLOYERS INSURANCE COMPANY
OF NEVADA, A MUTUAL COMPANY,
Appellant,

vs.

ESTATE OF WALTER GONSALVES
(DECEASED); CLAIRE B. GONSALVES;
AND ABBOTT LABORATORIES,
Respondents.

No. 39006

FILED

JUL 9 2003

CLERK OF SUPREME COURT
O. Shep
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order, entered on judicial review, affirming an administrative appeals officer's determination granting respondent Claire Gonsalves survivor benefits.¹

On Saturday evening, July 13, 1996, Walter Gonsalves, a sales representative and territorial manager for Abbott Laboratories d/b/a RPD Products Division (RPD), died on the Las Vegas Expressway as a result of a single-car accident. Gonsalves' work required him to deliver pharmaceutical baby products to various customers throughout the Las Vegas valley. As part of his employment agreement, Gonsalves was provided with a vehicle for this purpose. It is undisputed that Gonsalves was also permitted to use the vehicle for personal errands.

At the time of the accident, which occurred at approximately 10:00 p.m., Gonsalves' van was loaded with RPD products. Both

¹Claire Gonsalves, as the surviving spouse of the decedent, Walter Gonsalves, initiated these proceedings by seeking survivor benefits following her husband's death. For the sake of simplicity, we hereafter refer to Claire and the estate as respondent.

Gonsalves' wife and his son Pierre asserted Gonsalves was en route to deliver the products to an unidentified customer or to a storage warehouse routinely used by Gonsalves. Specifically, Pierre averred that he helped Gonsalves load the previously empty van with baby formula approximately twenty minutes before the accident.

Approximately eighteen months after Gonsalves' death and after consulting two attorneys, respondent filed a C-4 claim with Employers Insurance Company of Nevada² (EICON) seeking survivor benefits. EICON denied the claim. The administrative hearing officer reversed EICON's determination, concluding respondent was entitled to survivor's benefits. The administrative appeals officer affirmed. EICON's petition for judicial review was denied by the district court. EICON timely appealed.

EICON argues the appeals officer's decision was arbitrary and capricious because the officer ignored the greater weight of impartial and objective evidence. In particular, EICON asserts respondent has not proven by a preponderance of evidence that Gonsalves was acting in the course and scope of his employment at the time of the fatal accident. EICON contends the appeals officer relied on three assertions in granting respondent survivor benefits: (1) RPD products were in the back of the van at the time of the accident; (2) testimony established Gonsalves had, on prior occasions, made weekend deliveries; and (3) testimony established Claire Gonsalves' belief or assumption that her husband left their house for the purpose of making a delivery on the evening of the accident.

²Formerly State Industrial Insurance System (SIIS).

Conversely, respondent argues substantial evidence was adduced to support the appeals officer's decision. We agree.

This court's role in reviewing an administrative agency's decision is identical to that of the district court.³ This court reviews the record to determine whether the agency's decision is supported by substantial evidence.⁴ If it is not supported by substantial evidence, the decision is arbitrary and reversal is warranted.⁵ Substantial evidence is defined as that which "a reasonable mind might accept as adequate to support a conclusion."⁶

NRS 616C.505 provides for compensation to an employee's dependents when an injury by accident arising out of and in the course of employment causes the employee's death. Further, NRS 616C.150(1) provides that an injured employee or his dependents are not entitled to receive compensation "unless the employee or his dependents establish by a preponderance of the evidence that the employee's injury arose out of and in the course of his employment."

This court has established a two-part test for determining if an accident or injury arises out of employment: (1) a causal connection exists between the injury and the employee's work (i.e., a link between

³Tighe v. Las Vegas Metro. Police Dep't, 110 Nev. 632, 634, 877 P.2d 1032, 1034 (1994).

⁴NRS 233B.135(e).

⁵Tighe, 110 Nev. at 634, 877 P.2d 1034.

⁶State, Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986) (quoting Richardson v. Perales, 402 U.S. 389 (1971)).

work place conditions and how the conditions caused the injury), and (2) claimant must demonstrate that the origin of the injury is related to some risk involved within the scope of employment (i.e., the injury is fairly traceable to the nature of employment or the workplace environment). Resolution of whether an injury arose out of the employment is examined by a totality of circumstances.⁷

In the present case, the totality of the circumstances suggests Gonsalves left his residence on Saturday, July 13, 1996, for the purpose of delivering RPD products either directly to one of his hospital customers or to a storage facility. Although neither Claire nor Pierre Gonsalves had direct knowledge of Gonsalves' destination, testimony regarding Gonsalves' routine and habit was admissible to demonstrate it was unlikely he would ask his son to assist him with loading the van if he was not working, since testimony established he routinely emptied the van on weekends so that he could use it for personal transportation.⁸ Moreover,

⁷Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 604, 939 P.2d 1043, 1046 (1997) (examining whether an injured worker's injuries arose out of the course of his employment where the employee had a pre-existing medical condition which was found to have contributed to his injury).

⁸See NRS 48.059, which states:

1. Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

2. Habit or routine practice may be proved by testimony in the form of an opinion or by

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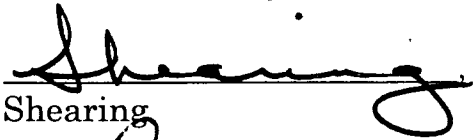
Claire Gonsalves testified that, in the course of the Gonsalves' twenty-three-year marriage, Gonsalves was a meticulous, hard-working man who seldom varied his routines. Specifically, Claire testified Gonsalves always emptied the van on Friday evenings, loading the van on weekends only when making deliveries or taking product to one of his storage facilities. Additionally, Claire stated she frequently went with Gonsalves on weekends, and the route he took on the night of his accident was consistent with his general practice of traveling on the expressway to go to UMC. Lastly, if Gonsalves left the house to run a personal errand on the night of his accident, it seems unlikely that he would have loaded the van with product prior to leaving, and equally unlikely that he would have taken the expressway when convenience stores, video rental stores and grocery stores were located closer to the Gonsalves home and did not require travel on the expressway.


Accordingly, the district court did not err in affirming the decision of the administrative appeals officer; the decision was supported by substantial evidence. We therefore


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specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

ORDER the judgment of the district court AFFIRMED.⁹

 J.
Shearing

 J.
Leavitt

 J.
Becker

cc: Hon. Jackie Glass, District Judge
Beckett & Yott, Ltd./Carson City
Beckett & Yott, Ltd./Las Vegas
Cobeaga Tomlinson, LLP
Littler Mendelson/Las Vegas
Clark County Clerk

⁹EICON also argued error associated with the timely filing for survivor benefits and the allegedly improper supplementation of the record before the district court by Gonsalves. We conclude EICON's arguments are without merit.