IN THE SUPREME COURT OF THE STATE OF NEVADA

EVELIA CERVANTES,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY OF NEVADA, AND BOBCAT OF LAS VEGAS,
Respondents.

No. 39031

FILED

MAY 15 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order, entered on judicial review, affirming an administrative determination that appellant Evelia Cervantes is not entitled to workers' compensation survivor benefits where her husband's death did not arise out of or in the course of his employment.

Gerardo Cervantes worked for Bobcat of Las Vegas (Las Vegas Bobcat). During the week, he resided in Las Vegas and would travel to his home in San Diego, California, on weekends to visit his family. On prior occasions, Cervantes delivered supplies or paperwork from Las Vegas Bobcat to Miramar Bobcat, located in California, during his trips home.

On the weekend of August 29, 1998, Cervantes asked to borrow a truck from Las Vegas Bobcat in order to travel to San Diego for the weekend because his personal vehicles were inoperable. He was allowed to borrow a company truck. No documentation was produced suggesting Cervantes had delivered supplies or paperwork to Miramar Bobcat during the trip. Rick Pumphrey, Las Vegas Bobcat's operations manager, affirmed Cervantes was not on the clock during the weekend, nor was he transporting work-related supplies or paperwork between the California Bobcat store (Miramar Bobcat) and Las Vegas Bobcat. Further, both William Dobson and Paul Trejo, employees of Miramar Bobcat, did

not recall Cervantes making any delivery on behalf of Las Vegas Bobcat when he stopped in to Miramar Bobcat before leaving California. While returning to Las Vegas, Cervantes was killed in a car accident in California.

Appellant sought survivor benefits through workers compensation insurance. The insurer denied appellant's benefits, concluding that the death did not arise out of or in the course of his employment. Both the hearing and appeals officer affirmed the insurer's denial of survivor benefits.

This court's role in reviewing an administrative agency's decision is identical to that of the district court.[1] This court reviews the record to determine whether the agency's decision is supported by substantial evidence.[2] If it is not supported by substantial evidence, the decision is arbitrary and reversal is warranted.[3] Substantial evidence is defined as that which "a reasonable mind might accept as adequate to support a conclusion."[4] Where an agency's conclusions of law are closely related to the agency's view of the facts, the substantial evidence standard applies.[5]

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

[2]NRS 233B.135(e).

[3]Tighe, 110 Nev. at 634, 877 P.2d 1034.

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

[5]SIIS v. Montoya, 109 Nev. 1029, 1031-32, 862 P.2d 1197, 1199 (1993).

First, appellant argues the death occurred while her husband was performing a special errand on behalf of his employer or engaged in a dual-purpose trip. As such, appellant contends she is entitled to survivor's benefits because the death arose out of or in the course of her husband's employment. Appellant contends NRS 616B.612(1) provides compensation to employees for injuries arising out of and in the course of employment. Appellant asserts the "special errand rule," an exception to the "coming and going rule," applies to her husband's transit between his home in San Diego and his place of work in Las Vegas on the weekend of August 29, 1997.[6] Specifically, appellant argues her husband was rushing back to Las Vegas to pick up his supervisor, Pumphrey, in order for Pumphrey to timely drop his child off at school before Cervantes and Pumphrey drove to their work site. Therefore, appellant argues this variation in her husband's normal course of travel creates the special circumstances that place Cervantes within the ambit of the special errand rule.

In addition, appellant contends her husband conducted business at Miramar Bobcat on Saturday, August 29, thus making the trip a dual-purpose trip. However, appellant does not specify what business he conducted at Miramar Bobcat.

EICON contends no conclusive evidence was adduced supporting appellant's assertion that her husband was performing business at Miramar Bobcat. Specifically, Cervantes' direct supervisor stated Cervantes was not transporting anything between the Bobcat stores on the weekend of August 29, 1997. EICON contends Cervantes' decisions to travel to San Diego over the weekend and to leave early

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[6]Citing D & C Builders v. Cullinane, 98 Nev. 67, 71, 639 P.2d 544, 547 (1982); Molino v. Asher, 96 Nev. 814, 817, 618 P.2d 878, 880 (1980).

Monday morning to return to Las Vegas were his decisions and not mandated by his employer.

It is well settled that injuries sustained by employees while going to or returning from their regular place of work do not arise out of and in the course of employment, subject to certain exceptions.[7] One of the exceptions is when the employee receives actual hourly wages for his time traveling to and from work.[8] Another exception applies when the employee is on a "bona fide business errand" when the incident giving rise to the claim occurs.[9] The test for providing coverage for an injury to an employee on a trip for both business and personal reasons requires only that the business nature of the excursion be bona fide.[10]

In the present case, we conclude substantial evidence supports the administrative finding that Cervantes was neither receiving wages from Las Vegas Bobcat during his travel time, nor was he engaged in a bona fide business errand during his travel. It is undisputed Cervantes was not receiving wages from Las Vegas Bobcat for his travel time related to the trips between his weekday home in Las Vegas and his family's home in San Diego. Thus, appellant is entitled to coverage only if she can demonstrate her husband's travel fell within one of the other exceptions to the "coming and going" rule.[11]

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[7]Tighe, 110 Nev. at 635, 877 P.2d at 1035.

[8]NRS 616B.612(2); Jourdan v. SIIS, 109 Nev. 497, 500-01, 853 P.2d 99, 102 (1993) (emphasis added).

[9]D & C Builders, 98 Nev. at 71, 639 P.2d at 547.

[10]Id. at 70, 639 P.2d at 546.

[11]See Schepcoff v. SIIS, 109 Nev. 322, 326, 849 P.2d 271, 274 (1993) (enunciating recognized exceptions to the coming and going rule).

Although appellant argues her husband was either engaged in transporting his employer to work or transporting supplies between Las Vegas Bobcat and Miramar Bobcat, she has failed to provide any evidence of these assertions. First, with regard to the transportation of his employer to work, Cervantes asked to borrow a company vehicle because he wanted to visit his family and needed to return his son to California for the start of the school year. Cervantes' travel purpose was, thus, personal. Specifically, if Cervantes had cancelled his trip to San Diego, there would have been no need to borrow and return the company vehicle and no accident would have occurred.[12]

Second, no documentation was produced suggesting Cervantes had delivered supplies or paperwork from Las Vegas Bobcat to Miramar Bobcat. Although Miramar Bobcat employee William Dobson thought Cervantes may have transported supplies, he did not recall the presentation of any documentation (i.e., an invoice slip). Further, Cervantes' supervisor affirmed that Cervantes was not transporting any supplies or paperwork between the two locations on the weekend in question. Lastly, there is no indication Cervantes' travel to San Diego benefited Las Vegas Bobcat, was within the scope of Cervantes' employment, was within the employer's control or at his direction, or that, although extraordinary, the travel was within the scope of Cervantes' employment. Thus, the administrative finding that there was no evidence

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[12]See D & C Builders, 98 Nev. at 70, 639 P.2d at 546 (although the court adopted the broader bona fide business errand exception, the court concluded that the claim in this case would support an award under the more narrow concurrent purpose or the primary purpose tests).

to corroborate appellant's argument that her husband was engaged in a dual-purpose trip is supported by substantial evidence.[13]

"Administrative or adjudicative tribunals are permitted to make findings of fact based on reasonable inferences supported by the evidence."[14] We conclude the appeals officer reasonably inferred from the evidence presented that Cervantes was not engaged in a bona fide business errand when he traveled to San Diego. We conclude the district court did not err in denying appellant's petition for judicial review and substantial evidence supported the appeals officer's decision. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Shearing, J.

Leavitt, J.

Becker, J.

cc: Hon. Jennifer Togliatti, District Judge
Craig P. Kenny & Associates
Beckett & Yott, Ltd./Las Vegas
Bobcat of Las Vegas
Clark County Clerk

[13]Cf. id. at 71, 639 P.2d at 546.

[14]Id. at 71, 639 P.2d at 547.