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Workers' compensation benefits unavailable for injuries sustained during commute

There are exceptions to this rule. But a California state appellate court reinforced how narrow two of the exceptions are.

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Under the “going and coming” rule, an employee generally is not entitled to workers’ compensation benefits for injuries sustained during their commute. There are exceptions to this rule. In *Zenith Insurance Company v. Workers’ Compensation Appeals Board*, a California state appellate court reinforced how narrow two of the exceptions are.

Background

Javier Hernandez was a farm laborer for Ceja Reyes, a contractor that supplies agricultural workers to businesses. Hernandez’s assigned worksite was 60 miles from his home. Hernandez’s employment contract said he was solely responsible for his transportation to and from work. Hernandez had no driver’s license, no car and no reasonable public transportation option to get to work.

A Ceja Reyes co-worker arranged a vanpool as a personal side business that Hernandez and other Ceja Reyes workers used to get to and from work. Hernandez paid \$10 a day to use the van. Once workers arrived at the job site, a Ceja Reyes supervisor assigned Hernandez and the other arriving workers their duties for the day.

The van crashed one day during Hernandez’s commute home, catastrophically injuring Hernandez and requiring amputation of his right leg.

Hernandez sought workers’ compensation benefits. Zenith Insurance Co., Ceja Reyes’s workers’ compensation carrier, denied the claim. Zenith asserted Hernandez’s injuries were not sustained in the course and scope of his employment under the going and coming rule. After the Workers’ Compensation Appeals Board sided with Hernandez, Zenith appealed.

The going and coming rule and its exceptions

The right to compensation for work-related injuries is broad under California law. An employee, however, is not entitled to workers’ compensation benefits for injuries the employee sustains going to or coming from work, absent extraordinary circumstances. The California Supreme Court has explained that injuries sustained during a commute generally are not considered to have occurred within the course and scope of employment because “ordinarily the employment relationship is suspended from the time the employee leaves work to go home until he resumes his work.”

One exception to this rule authorizes workers’ compensation benefits where the employment makes the employee’s commute especially risky. Another exception authorizes benefits where the

commute has a dual purpose, both to get the employee to the worksite and to provide special incidental benefits to the employer beyond getting the employee to the worksite.

Why neither special risk nor dual purpose exception entitled Hernandez to benefits

The court of appeal explained that the special risk exception to the going and coming rule applies only where the injury occurs within the immediate vicinity of the employer's premises, such as an accident that happens at a particularly dangerous intersection just outside the employer's property. The crash in which Hernandez was injured occurred far from his job site.

In addition, there was no relationship between Hernandez's risk of injury from riding in the vanpool and his employer's location, or control over conditions that caused his injuries. Hernandez claimed the employer subjected him to the risk of a vanpool crash by assigning him, a worker with no driver's license or access to reasonable public transportation, to a job site 60 miles from his home.

But those risks "were based on the nature of the employee, as a person who is not licensed to drive," not any circumstances over which the employer had any knowledge or control. To hold otherwise, said the court, would mean the special risk exception would "apply any time an employer hires a person without a driver's license or a car," seriously undermining the going and coming rule.

The dual purpose exception only applies where the employer benefits from the commute beyond the need for the employee's presence at work. It was not enough that the arrival of all the workers in the vanpool at the same time allowed Ceja Reyes's supervisor to assign them their daily work duties all at once.

Courts will resolve any doubt about whether workers' compensation benefits are available to an injured worker in favor of coverage. But this case teaches that injuries occurring during a commute will only rarely be covered by workers' compensation.