**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

| | | |
|---|---|---|
| **JOHN RAND** | ) | |
| Claimant | ) | |
| V. | ) | |
| | ) | AP-00-0480-423 |
| **WHITE KNIGHT DRILLING, LLC** | ) | CS-00-0477-460 |
| Respondent | ) | |
| AND | ) | |
| | ) | |
| **BITCO GENERAL INSURANCE CORPORATION** | ) | |
| Insurance Carrier | ) | |

# ORDER

Respondent appeals the December 7, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Bruce E. Moore.

## APPEARANCES

Phillip Slape appeared for Claimant. William L. Townsley, III appeared for Respondent and its insurance carrier.

## RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing from November 9, 2023, with exhibits attached, the documents of record filed with the Division and the parties' briefs.

## ISSUE

Did Claimant's injuries arise out of and in the course of his employment?

## FINDINGS OF FACT

Claimant began working for Respondent at the end of May or beginning of June of 2023. On June 30, 2023, Claimant was working on a drill site north of Ellis, Kansas. To get to the drill site, Claimant drove from his home in Great Bend, Kansas, to the driller's house in McCracken, Kansas. Claimant then rode with the driller to the drill site.

Before working with this driller, Claimant worked with another driller who picked Claimant up at his home in Great Bend or Claimant drove directly to the drill site.

On June 30 Claimant was working with a driller Shane Fehrenbach, who lived in McCracken. Claimant lived in the opposite direction of McCracken and the drill site. It was arranged for Claimant to come to Mr. Fehrenbach's house and ride to the drill site with Mr. Fehrenbach and another employee. According to Mr. Fehrenbach, it would have been out of his way to pick up Claimant because it would be in the opposite direction of the drill site. Claimant was to be at Mr. Fehrenbach's house by 9:30 p.m. and it would take about 30 minutes to get to the drill site.

Claimant worked his June 30 shift, which was scheduled to end at 7:00 a.m. But they were late leaving the drill site because the replacement crew was 30 minutes late. Claimant, Mr. Fehrenbach and another employee drove to Mr. Fehrenbach's house and arrived around 8:00 a.m. Claimant then left for his house.

Driving home, Claimant took the route recommended by MapQuest taking Highway 96 but Claimant turned off Highway 96 at Albert on to Barton County Road. For Claimant it was quicker and a more direct route to his house than the MapQuest route through Great Bend. While on Barton County Road, a few miles from his house, Claimant drifted off to the right side of the road into a ditch, hit a culvert, became airborne, hitting several fence posts before the car stopped. It was concluded by the investigator Claimant fell asleep, causing Claimant to lose control of the car.

The distance from McCracken to Great Bend is 57 miles.

Claimant was taken to the hospital in Great Bend and then by helicopter to Via Christi Hospital in Wichita for his injuries from the accident. Claimant suffered a burst fracture at L-1 in his back with posterior displacement and a mild acute compression fracture deformity involving the upper T-12 vertebrae. Since being released from the hospital on July 1, 2023, Claimant has not had any medical treatment because he cannot afford it. Claimant takes over-the-counter ibuprofen for pain. Claimant requests additional medical treatment.

As far as Claimant knows, he is still employed by Respondent. Claimant has not returned to work with Respondent or worked anywhere else. Claimant has work restrictions of no bending, twisting or lifting over 10 pounds.

Jerry Green, a geologist for Capital Resources and owner of Respondent testified Respondent is a rotary rig drilling company drilling oil wells in Western Kansas 3,000 to 4,000 feet deep. Currently, the company has 20 rigs in Kansas and in a normal year, they have 40 rigs. The company has 15 employees and of those travel is intrinsic for 13 of them, including Claimant. He testified the 13 employees are supposed to catch rides to

the dill site with the driller or stay in a motel within 10 to 15 miles of the drill site. There are four workers on each crew and a tool pusher for each shift and they work eight-hour shifts. The location job site changes frequently, about every 2 weeks.

Mr. Green assumed Claimant had to get to the driller's house in McCracken to catch a ride to the drill site. He is not sure why Claimant did not just stay at the motel in Ellis. Mr. Green testified it is possible Claimant was instructed to drive to McCracken from Great Bend.

Mr. Green testified he prefers the workers to stay at a motel near the job site, but they can also ride with the driller to the job site. Employees are not paid while they are driving, and the driller is the only one to be paid mileage. Employees are paid a per diem for equipment and clothing. According to Shane Fehrenbach, any mileage is included in the per diem portion of the pay check. He testified he might have given Claimant some payment for mileage because Claimant drove from Great Bend to McCracken. Mr. Fehrenbach noted the per diem portion of the check was in a amount, indicating Claimant could have received some mileage. Mr. Fehrenbach did not discuss with Claimant the option of staying in a motel near the drill site.

The ALJ ruled Claimant's travel from Great Bend to McCracken was an intrinsic part of Claimant's job. Claimant did not suffer his injury after he had completed the duties of employment and was on his way home but while he was completing the travel portion of his job duties. The ALJ ruled Claimant taking a different route from MapQuest was not a deviation from Claimant's job duties. The ALJ found Claimant's injuries arose out of and in the course of Claimant's employment.

## PRINCIPLES OF LAW AND ANALYSIS

Respondent appeals arguing Claimant is not entitled to workers compensation benefits because Claimant's injuries did not arise out of and in the course of his employment, as he was driving home after work. Respondent argues the sole issue on appeal is whether Claimant sustained his burden of proving the accident arose out of and in the course of employment and the evidence reveals he has not. Respondent argues Claimant taking a different route home is a deviation from his employment and is an abandonment of a business purpose.

Claimant argues the ALJ's Order should be affirmed. Claimant argues the injury arose out of and in the course of employment, because he was working at a drill site, and travel was intrinsic to his job. Claimant had to travel to a drill site away from his home and this fell within the exceptions of the going and coming rule.

K.S.A. 44-508(h) states:

> "Burden of proof"means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

Workers compensation benefits are paid when an accidental injury arises out and in the course of employment.[1] K.S.A. 44-508(f)(3)(B) further defines or limits what constitutes arising out of and in the course of employment, which is commonly known as the "going and coming rule":

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

The going and coming rule does not apply if the claimant was injured when traveling in a motor vehicle on a public roadway and the travel is integral part or is necessary to his job.[2]

Claimant's employer is a rotary rig drilling company drilling oil wells in western Kansas. The drill site location changes frequently, every 2 to 3 weeks. Respondent's practice is to have workers like Claimant either catch rides with the driller or stay in a motel close to the drill site. Claimant lives in Great Bend. When Claimant first started working for Respondent, the driller Claimant was working with lived in Great Bend, and picked him up at his home. When Claimant started working for Mr. Fehrenbach, Claimant was asked to drive to Mr. Fehrenbach's home in McCracken, Kansas, to drive to the drill site in Ellis, Kansas, with Mr. Fehrenbach. Mr. Fehrenbach asked Claimant to drive to McCracken because it would have been out of his way to pick Claimant up in Great Bend and then go

---

[1] *See* K.S.A. 44-508(f)(2).

[2] *See Craig v. Val Energy Inc.*, 47 Kan. App. 2d 164, 274 P.3d 650 (2012), *rev. denied* (May 20, 2013); *Messenger v. Sage Drilling* Co., 9 Kan App..2d 435, 680 P.2d, 556, *rev. denied* 235 Kan. 1042 (1984).

to the drill site.

According to Mr. Fehrenbach, when employees must drive far to ride with him to the drill site, he would pay them mileage. Employees like Claimant were given per diem. Per diem is an entry on the paycheck and any mileage given Claimant would have been included in the per diem entry. Mr. Fehrenbach noted Claimant had a larger amount in his per diem entry than he would normally expect which caused Mr. Fehrenbach to believe he had paid Claimant some mileage to get to his home in McCracken.

Claimant was injured when he was en route back to his home in Great Bend from McCracken. Claimant was accommodating Mr. Fehrenbach by driving from his home to Mr. Fehrenbach's home some 57 miles away. Respondent acknowledges if Claimant had been injured while riding with the driller, Claimant's injuries would arise out of and in the course of Claimant's employment, but not when Claimant is driving back and forth to his home to Mr. Fehrenbach's home. Claimant's injury occurred when his sole purpose for being on the roadway, where he was injured, was in the furtherance of Respondent's interests.

The case *Williams v. Petromark Drilling*[3] is similar to this case. In *Williams,* the claimant was injured while riding with another employee from the work site who lived in the same town, Pawnee Rock, as the claimant. Claimant's ususal practice was to ride with his supervisor who drove the claimant to Great Bend, where the claimant was picked up by his wife. Claimant acknowledged it was more convenient for him to ride with the employee from Pawnee Rock. The Kansas Supreme Court found there was substantial competent evidence for the Workers Compensation Appeals Board to find the claimant's injuries arose out of and in the course of the claimant's employment. In this case, Claimant was on the road where he was injured because it was more convenient for his employer for Claimant to drive to McCracken from his home. It was necessary for Claimant to be at the job site and he was not instructed to stay at a hotel. It is found and concluded Claimant's injuries arose out of and in the course of employment. Claimant's travel was in the furtherance of Respondent's interests when he was injured and intrinsic to Claimant's work .

Respondent argues Claimant deviated from the travel intrinsic to his work to the extent he was no longer acting in furtherance of his employer's interests and his injury did not arise out of and in the course of his employment. Respondent speculates if Claimant had stayed on the routes set out in MapQuest, it was more safe and less likely to result in an accident and serious personal injury. Respondent further argues Claimant's change in

---

[3] *Williams v. Petromark, LLC,* 299 Kan. 792, 326 P.3d 1057 (2014).

the route made the trip longer. Claimant changed the route from the MapQuest designated route because it was a quicker route to his house. Claimant's decision was based on his personal knowledge of the area and not based on a computer generated map. Claimant's change in route did not constitute a deviation to the extent Claimant abandoned his employment related travel and the employer's interests. This Board member finds this argument without merit.

## DECISION

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of ALJ Bruce E. Moore, dated December 7, 2023, is affirmed.

**IT IS SO ORDERED.**

Dated this _____ day of March, 2024.

_____
REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Phillip Slape, Attorney for Claimant
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier
Hon. Bruce E. Moore, Administrative Law Judge