SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3591-15T1

BO LIU,

Petitioner-Appellant,

v.

4D SECURITY SOLUTIONS, INC.,

Respondent-Respondent.

Argued March 21, 2017 – Decided May 1, 2017

Before Judges Messano and Suter.

On appeal from the Division of Workers' Compensation, Department of Labor and Workforce Development, Docket No. 2013-11070.

Christina Vassiliou Harvey argued the cause for appellant (Lomurro, Munson, Comer, Brown & Schottland, L.L.C., attorneys; Richard Galex, of counsel; Ms. Harvey and Emily A. Mari, on the briefs).

Victoria Martin Gomez argued the cause for respondent (Law Offices of William Staehle, attorneys; Ms. Gomez, on the brief).

PER CURIAM

Bo Liu appeals from the April 4, 2016 order of the Division of Workers' Compensation that dismissed his petition for benefits

with prejudice. We discern the following, largely undisputed facts from the record.

Respondent 4D Security Solutions, Inc. (4D) employed Liu as an engineer whose responsibilities included testing the company's hardware and software at an army base in the United Arab Emirates (UAE). Liu arrived in the UAE on the Saturday following Thanksgiving 2011. 4D arranged and paid directly for his travel, hotel, meals and expenses. The usual workweek in the UAE was Sunday through Thursday, and on those days, Liu was taken to the base by "local people" who had passes used to gain him access.

4D assigned a supervisor to work with Liu and his co-workers in the UAE, but Liu primarily worked alone while on the base. After leaving the base for the day, Liu uploaded data to 4D in the United States between 5 p.m. and 7 p.m. local time, sometimes later, using a company-issued Blackberry or computer. He was required to respond as necessary to inquiries from 4D's employees in the United States.

On Friday, December 2, 2011, Liu had no "field work" and decided to go to a museum. He testified that he needed to understand the "people and know the culture" of the UAE, and believed this would help him with his work while in the country. He carried his Blackberry with him in the event he needed to respond to company employees in the United States, but he could

not recall if he received any messages that morning. After being at the museum for approximately two hours, Liu fell descending a ladder at a part of the museum he called the "castle." He underwent surgery in the UAE and subsequently filed his petition for workers' compensation benefits.

On cross-examination, Liu admitted he was injured while sightseeing on "free time," although he reiterated the company required him to respond to inquiries from the United States whenever they were made. Liu acknowledged his visit to the museum had nothing directly to do with "software testing," but he believed the museum visit "would help [him] understand or know [the] people" in the UAE.

In a short written decision that accompanied her order, the judge of compensation (JWC) considered Liu's contention that his injury was compensable under the "special mission" doctrine. Citing N.J.S.A. 34:15-36, the JWC noted injuries occurring outside the workplace may be compensable if the employee is "engaged in the direct performance of duties, assigned or directed by the employer." The JWC found our decision in Walsh v. Ultimate Corp., 231 N.J. Super. 383 (App. Div.), certif. denied, 117 N.J. 92 (1989), "most closely analogous" to the facts at hand. She concluded,

> While his job required [Liu] to be in the UAE, [Liu] was not performing any job duties at the time of his injury. Additionally, he was not required to visit the museum by his employer. His employment, which consisted of software testing, was unrelated to his museum visit. There was no benefit to [4D].

The order dismissing the petition stated Liu's "injury [did] not arise during the course of [his] employment." This appeal followed.

Before us, Liu argues the JWC misapplied the special mission doctrine, misinterpreted our holding in Walsh, and failed to consider the "mutual benefits doctrine," or that Liu was "on-call and on duty at the time of his accident." 4D counters the judge properly dismissed the petition because the special mission doctrine did not apply. It also argues Liu never asserted before the JWC that the mutual benefits doctrine applied, or that his injury was compensable because he was "on call" at the time. Having considered these contentions in light of applicable legal principles, we affirm.

The Court has said:

> In workers' compensation cases, the scope of appellate review is limited to "whether the findings made could reasonably have been reached on sufficient credible evidence present in the record, considering the proofs as a whole, with due regard to the opportunity of the one who heard the witnesses to judge of their credibility."

> [Lindquist v. City of Jersey City Fire Dep't, 175 N.J. 244, 262 (2003) (quoting Close v. Kordulak Bros., 44 N.J. 589, 599 (1965)).]

"Deference must be accorded the factual findings and legal determinations made by the Judge of Compensation unless they are 'manifestly unsupported by or inconsistent with competent relevant and reasonably credible evidence as to offend the interests of justice.'" Id. at 262-63 (quoting Perez v. Monmouth Cable Vision, 278 N.J. Super. 275, 282 (App. Div. 1994), certif. denied, 104 N.J. 277 (1995)). "[T]he judge of compensation's legal findings are not entitled to any deference and, thus, are reviewed de novo." Hersh v. Cty. of Morris, 217 N.J. 236, 243 (2014) (citing Williams v. A & L Packing & Storage, 314 N.J. Super. 460, 464 (App. Div. 1998)).

Only those employees injured in accidents "arising out of and in the course of employment" are entitled to workers' compensation benefits. Ibid. (quoting N.J.S.A. 34:15-7). N.J.S.A. 34:15-36 provides in pertinent part:

> Employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer; provided, however, when the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the

> direct performance of duties assigned or directed by the employer . . . .
>
> [Ibid. (emphasis added).]

Section 36 reflects the Legislature's decision to "updat[e] the definition of 'employment' to be more restrictive." Hersh, supra, 217 N.J. at 244; see also Jumpp v. City of Ventnor, 177 N.J. 470, 476-79 (2003) (tracing jurisprudential developments leading to 1979 adoption of Section 36).

The above-highlighted portion of the statute embodies the "'special mission' exception" to the general rule that accidents occurring outside the workplace are not compensable. Zelasko v. Refrigerated Food Express, 128 N.J. 329, 336 (1992). This exception "allows compensation at any time for employees . . . required to be away from the conventional place of employment[,] if actually engaged in the direct performance of employment duties." Ibid. Whether the exception applies turns on the particular facts of each case. Nemchick v. Thatcher Glass Mfg. Co., 203 N.J. Super. 137, 143 (App. Div. 1985). However, we have made clear that in applying the "special mission" exception, "the central inquiry must be whether the employee was in the direct performance of his assigned duty." Id. at 142.

We agree with the JWC that the facts presented in Walsh are particularly analogous to this case. There, the petitioner's

company sent him on a long-term assignment in Australia. Walsh, supra, 231 N.J. Super. at 386. His supervisor encouraged him to visit certain sights and not stay in the office or his hotel on weekends, hoping to persuade the petitioner to accept a full-year assignment to the country and move there with his family. Id. at 386-87. Upon finishing work for the day, the petitioner set out on an extended automobile trip, taking work with him for the night, and planned to sightsee the next day. Id. at 387. The petitioner was killed in an automobile accident before reaching his destination. Ibid.

We considered the "special mission" exception from two perspectives. Id. at 388. First, we considered whether the petitioner's presence in Australia, away from his employer's place of business, was sufficient. Id. at 388-89. In this regard, we noted "his employer's directive to straighten out the Australian operation and see the country[,]" and the "clear benefit to his employer" anticipated from seeing the sights. Ibid. Secondly, we considered the accident utilizing the Australian office as the "employer's place of employment." Id. at 389. In this regard, we considered the petitioner's normal work hours and that he took work with him on the trip. Ibid.

In reversing the compensation award, we concluded the petitioner had established a "new 'place of employment'" in Australia, but he

> was not on duty at the time of his accident either by reason of his being encouraged to sight-see or by reason of the fact that he had work with him which he expected to work on when he arrived at his destination. Any work that he might do when he arrived at his destination was up to him both with respect to when and where he might do it. It was not directed by his employer that he go to the particular location where he was headed so that he might accomplish his work there.
>
> [Id. at 390.]

We also rejected the petitioner's assertion of the "'mutual benefit' doctrine" because any "benefit to the employer was no greater than that which might be incidental to improving the employee's morale." Id. at 391.

Liu seeks to distinguish this case from Walsh by noting he was "on-duty" when he fell and his trip to the museum was unrelated to his "morale," but rather was in support of his assignment. We are unpersuaded that such distinctions translate into a meaningful difference in result.

Liu cites two pre-amendment cases, Paige v. City of Rahway, Water Department, 74 N.J. 177 (1977), and Sabert v. Fedders Corp., 75 N.J. 444 (1978), for the broad proposition that being "on-call" means his injuries were compensable. However, the 1979 amendment

intended to limit compensation to accidents occurring "when the employee is engaged in the direct performance of duties assigned or directed by the employer." N.J.S.A. 34:15-36. The record simply does not support the conclusion that contact from 4D employees in the United States intruded into Liu's everyday life in the UAE so as to render him constantly at work, nor does the record demonstrate the company intruded into Liu's free time at all on the day in question.

Lastly, we agree with 4D that Liu never specifically asserted the "mutual benefits" doctrine before the JWC. See Mikkelsen v. N.L. Indus., 72 N.J. 209, 214 (1977) ("[W]here the activity in which an employee was engaged when injured constitutes a clear and substantial benefit to the employer, an independent ground exists for the conclusion that the accident arose in the course of employment."). We therefore need not consider it. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1977) (citation omitted).

Nevertheless, for the sake of completeness, we conclude the argument lacks sufficient merit to warrant extended discussion. R. 2:11-3(e)(1)(E). It is unclear whether the mutual benefits doctrine has continued vitality after the 1979 amendment, and Liu cites no post-amendment decision that has applied the doctrine. More importantly, Liu's personal belief that a museum visit would help him understand the UAE's history and culture so he could work

better with those around him falls far short of demonstrating 4D would necessarily derive any tangible benefit from the museum visit.

Affirmed.