2023 WL 4981202 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: NYC DEP

Case No. G322 3565
Carrier ID No. W8262200050 W847008
July 27, 2023

***1** CNY Other Than Ed, HEd Water
Attn: Maria Ziccardi
Deputy Director
350 Jay Street, 9th Floor
Brooklyn, NY 11201
Date of Accident 2/1/2022

The Full Board, at its meeting held on July 18, 2023, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed January 27, 2023.

ISSUE

The issue presented for Mandatory Full Board Review is whether claimant sustained an accidental injury arising out of and in the course of his employment.

The Workers' Compensation Law Judge (WCLJ) established this claim for an injury to claimant's left shoulder.

The Board Panel majority affirmed, finding that claimant sustained an accidental injury arising out of and in the course of his employment.

The dissenting Board Panel member would find that claimant's injury arose out of a purely personal act and would disallow the claim.

The self-insured employer (SIE) filed an application for Mandatory Full Board Review on February 27, 2023, arguing that claimant's accident did not arise out of and in the course of his employment and that the claim should be disallowed. The SIE contends that the accident is not compensable because it occurred during claimant's lunch break. The SIE further contends that "insufficient information in the record exists to determine whether an equivalent incident that occurred in the conventional workplace would be compensable."

The claimant filed a rebuttal on March 27, 2023, arguing that his injuries occurred during "his regular work assignment and regular work location, and thus [he] is entitled to the same protections as he would have been at an office maintained by his employer." Therefore, claimant contends, the Board Panel majority properly found that his accidental injury arose out of and in the course of his employment.

Upon review, the Full Board votes to adopt the following findings and conclusions.

FACTS

Claimant filed a C-3 (Employee Claim) on February 11, 2022, alleging that while working remotely on February 1, 2022, he tripped while "on break" and injured his left arm. The SIE controverted the claim, arguing, among other things, that claimant's injury did not arise out of and in the course of his employment.

The record contains an "Employee Statement" dated February 9, 2022, stating that on February 1, 2022, claimant was working at home when:

During lunch break approximately 1:45 p.m. had lunch in right hand and family dog Hercules tripped me to get my lunch sandwich holding with my right hand. I fell [d]own on my left side arm on my hard wood living room floor....

At a hearing on August 22, 2022, claimant testified that he worked for the SIE as a supervisor in the fleet services department. On February 1, 2022, he was returning to his "City computer laptop to continue any work[,]" carrying a sandwich, when his dog "forcibly took the sandwich from" his hand, causing him to fall to the ground (Hearing Transcript, 8/22/22, p. 4). He was working from home that day because he had "a waiver from the City" due to poor health, and "did not want to get Coronavirus" (id.). He had intended to eat the sandwich for lunch but "the dog tackled [him] and took everything" (p. 5). He injured his left shoulder when he fell and first sought medical treatment on February 3, 2022.

***2** After listening to claimant's testimony and summations by the parties, the WCLJ established the claim for an accidental injury to claimant's left shoulder, set claimant's average weekly wage at $1, 553.97, and made awards. The findings and awards made at the August 22, 2022, hearing are reflected in a decision filed August 30, 2022.

The SIE requested administrative review, arguing that claimant's accident occurred while he was engaged in a purely personal act and had no relation to his employment.

In rebuttal, claimant argued that the accident arose out of and in the course of his employment, as his home had become his place of employment and the accident occurred while "[h]e was furthering the business of the employer at the time of his injury because he was actively walking back to his workstation when his injury occurred."

LEGAL ANALYSIS

"Workers' compensation benefits are intended to be dispensed regardless of fault, for any injury arising out of and in the course of one's employment" (Auqui v. Seven Thirty One Ltd. Partnership, 22 NY3d 246 [2013]).

"A regular pattern of work at home renders the employee's residence a place of employment as much as any traditional workplace maintained by the employer" (Matter of Capraro v. Matrix Absence Mgt., 187 AD3d 1395 [2020][internal quotation marks and citations omitted). "Accidents that occur during an employee's short breaks, such as coffee breaks, are considered to be so closely related to the performance of the job that they do not constitute an interruption of employment" (Matter of Pabon v New York City Tr. Auth., 24 AD3d 833 [2005]). Likewise, an employee that remains on the employer's premises during her lunch break continues to be in the course of employment during her break (Matter of Iacovelli v New York Times Co., 124 AD2d 324 [1986]; see also WCL § 10).

Here, the record reflects that claimant was working remotely from home, with the SIE's knowledge and consent, and was injured during his regular work hours. Therefore, claimant's residence was his place of employment at the time of his injury. Claimant credibly testified that he was injured while returning to his work computer and intended to eat the sandwich he was carrying while continuing to work. Therefore, claimant clearly remained in the course of his employment at the time of the injury. Moreover, even if the accident occurred while claimant was on a formal unpaid lunch break, because claimant remained in his house, which constituted his place of employment, any injury that occurred during the lunch break would also be deemed to have occurred during the course of his employment.

When, as here, “the injury occurred during the course of claimant's employment, a presumption arises that it also arose out of the scope of his employment, unless the presumption is successfully rebutted by substantial evidence to the contrary” (Matter of Marotta v. Town and Country Elec., Inc., 51 AD3d 1126 [internal quotation marks and citations omitted]; WCL § 21[1]). “Activities which are purely personal pursuits are not within the scope of employment and are not compensable under the Workers' Compensation Law, with the test being whether the activities are both reasonable and sufficiently work related under the circumstances” (Matter of Vogel v Anheuser-Busch, 265 AD2d 705 [1999]). In the present matter, claimant's act of carrying a sandwich with the intent of returning to his work computer and eating the sandwich while working was plainly reasonable and sufficiently work related under the circumstances to conclude that the presumption created by WCL § 21(1) was not rebutted.

***3** Based on the record before us and the precedent cited above, the Full Board finds that it is constrained to find that claimant's injuries arose out of and in the course of his employment.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on August 30, 2022, is AFFIRMED. No further action is planned by the Board at this time.

Chair - Clarissa Rodriguez

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