SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DE 19947

August 22, 2007

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RE: Delhaize America, Inc., d/b/a Food Lion v. Kathleen Barkas
C.A. No. 07A-01-002-ESB
Letter Opinion

Date Submitted: April 9, 2007

Dear Counsel:

This is my decision on Food Lion's appeal of the Industrial Accident Board's ("Board") finding that Kathleen Barkas' ("Barkas") car accident in the parking lot in front of a Food Lion store occurred on its premises and arose out of and in the course of her employment with Food Lion.

STATEMENT OF THE FACTS

Barkas is employed by Food Lion as a grocery sales manager at its store in Seaford, Delaware. She was not scheduled to work on September 21, 2005. However, Barkas had to go to the store that day for a mandatory meeting. She drove to the store, parked in the parking lot in front of the store, went into the store, clocked in and then went to the meeting. Food Lion directs its employees to park in an area of the parking lot that is, when you face the store, to the left of the store against a row of trees. Barkas was not able to park in the designated area on the day in question

because it was full. She instead parked in the next available area, which was in front of the store. When the meeting was over, Barkas clocked out and went directly to her car. She pulled out of her parking space and was headed down the aisle when her car was hit by another car. Barkas was injured in the accident.

The accident occurred in the strip center's parking lot. There are only four stores in the strip center building. Food Lion's store is the largest. All four stores use the parking lot in front of the building. There are other stores in the shopping center, but they are in separate buildings and all have their own parking lots that are separated by curbing from the strip center's parking lot. Food Lion's employees and customers park their cars in the parking lot. Food Lion has three cart carrels with its name on them in the parking lot for its shopping carts. Food Lion's employees leave the store and go to the parking lot to get the shopping carts from the cart carrels, as well as shopping carts left in the parking lot by its customers, and bring them back to the store for Food Lion's customers to use. Food Lion does not own or maintain the parking lot. However, whenever there is a problem with the parking lot, Food Lion calls the parking lot owner to get the problem fixed.

The Board held a hearing on November 8, 2006. The sole issue before the Board, by agreement of the parties, was whether Barkas was "in the course and scope of her employment" at the time of her injury. Barkas and Dennis Clayton ("Clayton"), the Seaford Food Lion store manager, testified. Barkas testified about the meeting and her accident. Clayton testified about the parking lot. The Board ruled in favor of Barkas, finding that the parking lot was part of Food Lion's premises and that Barkas was acting "in the course and scope of her employment" with Food Lion when she was injured because she was at the store for a mandatory meeting. Food Lion then filed this appeal, arguing that Barkas was engaged in a personal activity off of its premises when she was

injured.

STANDARD OF REVIEW

The Supreme Court and this Court repeatedly have emphasized the limited appellate review of the factual findings of an administrative agency. The function of the Superior Court on appeal from a decision of the Industrial Accident Board is to determine whether the agency's decision is supported by substantial evidence and whether the agency made any errors of law.[1] Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[2] The appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.[3] It merely determines if the evidence is legally adequate to support the agency's factual findings.[4] Absent an error of law, the Board's decision will not be disturbed where there is substantial evidence to support its conclusions.[5]

DISCUSSION

______Barkas is entitled to receive workers' compensation benefits if she was injured in an accident that "arose out of" and was "in the course of" her employment with Food Lion while she was on its "premises."[6] Barkas was injured when she was leaving work. Therefore, her claim is governed

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[1] *General Motors v. McNemar*, 202 A.2d 803, 805 (Del. 1964); *General Motors v. Freeman*, 164 A.2d 686 (Del. 1960).

[2] *Oceanport Ind. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battisa v. Chrysler Corp.*, 517 A.2d 295, 297 (Del.1986), *app. dism.*, 515 A.2d 397 (Del. 1986).

[3] *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

[4] 29 *Del.C.* § 10142(d).

[5] *Dellachiesa v. General Motors Corp.*, 140 A.2d 137 (Del. Super. 1958).

[6] *Tickles v. PNC Bank,* 703 A.2d 633, 635-636 (Del.1997).

initially by the so-called “going and coming rule.”[7] This rule has been summarized as follows:

> “As to employees having a fixed place of work, the generally accepted rule is that injuries occurring while they are going to and from work are compensable if they occur on the employer’s premises, but are not compensable if they occur off the premises.”[8]

Barkas was injured in the parking lot in front of Food Lion’s store. The Board found that the parking lot was part of Food Lion’s premises. This finding is in accordance with the applicable law and supported by substantial evidence in the record. A parking lot will be considered part of an employer’s premises if the employer owns it, or has acquired the right to use it, or exercises control over it.[9] While Food Lion does not own the parking lot that is in front of, and contiguous to, its store, Food Lion obviously has the right to use the parking lot and does exercise some degree of control over it. Indeed, in some respects, the parking lot is both an actual and integral part of Food Lion’s premises. Food Lion’s employees regularly work in the parking lot by retrieving shopping carts that have been left there by Food Lion’s customers, making the parking lot an actual part of their workplace and Food Lion’s premises. Food Lion’s employees park in a designated area of the parking lot. Food Lion’s customers park in the parking lot. Food Lion also uses certain areas of the parking lot for its exclusive use by placing its shopping cart carrels there. When there is a problem with the parking lot, Food Lion contacts the parking lot owner to get the problem fixed. Food Lion simply could not operate its grocery store without using the parking lot, making it an integral part of its premises. While Food Lion may not own the parking lot, there is obviously a relationship

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[7] *Histed v. E.I. Du Pont De Nemours & Co.*, 621 A.2d 340, 343 (Del. 1993).

[8] *Quality Carwash v. Cox*, 438 A.2d 1243, 1245 (Del. Super. 1981).

[9] *Id.* at 1246.

between Food Lion and the parking lot owner that gives Food Lion the right to use and control the parking lot for purposes that are necessary to the operation of its grocery store. Under these circumstances, the parking lot is certainly a part of Food Lion's premises.

The Board also found that Barkas was acting "in the course and scope of her employment" with Food Lion when she was injured. While the Board did not use the exact statutory language, I am satisfied that the Board's finding is in accordance with the applicable law and supported by substantial evidence in the record. The phrases "arising out of employment" and "in the course of employment" are not synonymous.[10] They are distinct and Barkas must satisfy each of them in order to get workers' compensation benefits.[11]

The phrase "arising out of employment" is generally held to refer to the "origin of the accident and its cause, and relates to the character and quality of the accident with reference to the employment."[12] Most authorities hold that an injury arises out of an employee's employment if it "arises out of the nature, conditions, obligations or incidents of the employment, or has a reasonable relation to it."[13] This does not mean that the injury has to arise out of the employee's main work.[14] It is sufficient if the injury arises from a "situation which is an incident or has a reasonable relation to the employment, and that there be some causal connection between the injury and the

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[10] *Stevens v. State*, 802 A.2d 939, 945 (Del. Super. 2002).

[11] *Id.*

[12] *Dravo Corp. v. Strosnider*, 45 A.2d 542, 545 (Del. Super. 1945).

[13] *Id.*

[14] *Id.*

employment."[15] However, there does not have to be an "essential causal relationship" between the employment and the injury.[16] Therefore, an employee does not have to be injured during a job-related activity to be eligible for workers' compensation benefits.[17] The phrase "in the course of employment" relates to the time, place and circumstances of the injury.[18] It covers those things that an employee may reasonably do or be expected to do within a time during which he is employed, and at a place where he may reasonably be during that time.[19] The general rule is that an employee's hours of employment include a reasonable amount of time before and after an employee's work hours.[20]

Given how broadly these phrases have been defined and applied,[21] Barkas certainly was injured in an accident that "arose out of" and was "in the course of" her employment with Food Lion. Barkas went to the Food Lion store to attend a mandatory meeting for employees on September 21, 2005. There is no doubt that the meeting was a "condition, obligation and incident" of her

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[15] *Id.*

[16] *Tickles*, 703 A.2d at 637.

[17] *Id.*

[18] *Storm v. Karl-Mil, Inc.,* 460 A.2d 519, 521 (Del. 1983), citing *Children's Bureau v. Nissen*, 29 A.2d 603, 607 (Del. Super. 1942).

[19] *Dravo Corp., 45* A.2d at 543-44.

[20] *Rose v. Cadillac Fairview Shopping Center*, 668 A.2d 782, 788 (Del. Super. 1995).

[21] In *Rose v. Cadillac Fairview Shopping Center*, the Superior Court held that the abduction and rape of an employee who was waiting in her car in a mall shopping center parking lot, where her employer's store was located, 45 minutes before her shift started, arose out of and was in the course of her employment. Similarly, in *Tickles v. PNC Bank*, the Supreme Court held that an employee's slip and fall on her employer's parking lot while she was on the way to use her employer's ATM one hour before her shift started, arose out of and was in the course of her employment.

employment. It was also the only reason that she was on Food Lion's premises that day, thus establishing a causal connection between Barkas' employment and her presence on Food Lion's premises at the time of the accident. Barkas was injured on Food Lion's premises right after she left the meeting. Certainly Barkas could be expected to leave Food Lion's premises after the meeting was over. Moreover, there was no period of time between the end of the meeting and Barkas' accident in which she engaged in any activity that was unrelated to her reason for going to Food Lion's store. Thus, Barkas was doing something that she could reasonably be expected to do, at both a time and a place where she could reasonably be expected to be, when she was injured. Barkas has met all three requirements for obtaining worker's compensation benefits under the facts of this case.

CONCLUSION

The Board's decision is affirmed.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

oc: Prothonotary
cc: Industrial Accident Board