Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 16, 2015

CLAIM NO. 201395469

ADMINISTRATIVE OFFICE OF THE COURTS PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

KATHY BLEVINS and
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. The Administrative Office of the Courts ("AOC") appeals from the Opinion, Award and Order rendered May 26, 2015 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") finding Kathy Blevins ("Blevins") sustained a work-related injury on January 25, 2013 when she slipped and fell on ice as she was walking from a parking lot to the

Knox County Courthouse. The ALJ found the accident occurred in the course and scope of Blevins' employment and awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits. AOC also appeals from the July 2, 2015 order denying its petition for reconsideration.

On appeal, AOC argues the ALJ misapplied the law regarding whether Blevins' injury occurred in the course and scope of her employment. AOC also argues the ALJ's opinion is not supported by substantial evidence. Because we find the ALJ committed no error in finding Blevins' accident work-related, and his determination is supported by substantial evidence, we affirm.

Blevins filed a Form 101 on October 3, 2014 alleging she sustained injuries to her right knee and ankle when she slipped and fell on an icy sidewalk as she was walking from a parking lot to the Knox County Courthouse. At the time of the accident, Blevins was a deputy clerk in the Knox Circuit Clerk's office where she was employed from July 1986 through May 2013.

Blevins testified by deposition on December 3, 2014 and at the hearing held March 24, 2015. Blevins is a resident of Barbourville, Kentucky. Other than her employment as a deputy clerk, she worked as a sales clerk

for approximately six years in the 1980s, and operated a sewing machine in a factory for two years. She stated as a deputy clerk she worked thirty-seven and a half hours per week with some overtime. Her job entailed sitting, standing, climbing ladders, as well as lifting and carrying up to thirty pounds. She retired from her position as deputy clerk in July 2013.

It is undisputed Blevins slipped and fell on an icy sidewalk on January 25, 2013 when she was walking from a parking lot to the courthouse. The AOC had six parking spaces behind the courthouse, however she was not permitted to park there on days court was in session. The AOC parking lot was closest to the entrance she was required to use. Although there were empty parking spaces in the AOC lot when she arrived on the date of the accident, she was directed to park elsewhere on court days, so she parked in the Sheriff's parking lot. This was the same parking lot used by the Circuit Clerk. The Circuit Clerk had advised Blevins she could use the Sheriff's lot located across the street from the entrance she was required to use. She stated when she fell she was taking the most direct route to the entrance she was required to use. Blevins reviewed and submitted a map of the courthouse, her route, the parking lot used, the AOC parking lot, and the site of the accident.

When Blevins fell she injured her right knee and foot. She had previously undergone surgery for an unrelated right knee injury in August 2012, from which she had recovered and returned to work. A few years prior to the August 2012 surgery, she had a right knee arthroscopy, also for an unrelated condition.

After the accident, Blevins was taken by ambulance to the Knox County Hospital where she was treated and released. Later that day she went to the emergency room at Central Baptist Hospital in Lexington, Kentucky. She was initially confined to a wheelchair. After eight weeks she was allowed to use a walker. Six to eight weeks later physical therapy was ordered, which she has been unable to attend due to a denial from AOC's insurer. She takes arthritis medication which she was taking prior to her accident, and an occasional Tylenol. She occasionally experiences right knee clicking and popping. She stated she can stand for approximately twenty minutes before she experiences right knee and back pain. She can walk approximately a quarter of a mile. She does not believe she can return to any of her past jobs. After she retired she worked for one week as an instructional aide/assistant with the Knox County Board of Education, but quit after five days due to problems with her knee and arthritis. Blevins uses a

knee brace when she walks which she did not have to do prior to the accident.

James Tye ("Tye"), the Deputy Judge-Executive of Knox County, testified by deposition on February 26, 2015. Prior to his current position, Tye was the city manager for Barbourville. Mr. Tye reviewed a map of the area around the courthouse. He identified the AOC lot, the Sheriff's lot, and the location of the fall. He did not know where AOC employees were told to park. He stated where Blevins parked on the day of the accident was closest to the entranceway she was required to use. Tye stated the parking lot used by Blevins was jointly owned by Barbourville and Knox County. He noted a portion of the center of the parking lot was privately owned.

Because the medical evidence is not at issue, it will not be discussed.

A benefit review conference ("BRC") was held on March 10, 2015. The BRC Order and Memorandum notes Blevins' accident occurred on January 25, 2013 and notice was timely provided. The contested issues listed included capacity to return to the type of work performed on the date of the accident; benefits pursuant to KRS 342.730; work-relatedness/causation; unpaid/contested medical expenses; injury as defined by the Act; TTD; extent and duration with

multipliers; the application of the going and coming rule; and scope of employment.

Both parties filed briefs, and the ALJ rendered his decision on May 26, 2015. Regarding the issues raised on appeal, the ALJ found as follows:

> My analysis must begin with the three interrelated and threshold issues of Injury as defined by the ACT, Going to/coming from rule, and Scope of employment.
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> With regard to the facts of the accident itself, the Plaintiff sets out an accurate version in her brief. On January 25, 2013, a couple of minutes before 8:00 A.M., Blevins had gotten out of her car and was walking toward the door of the courthouse. Earlier that morning there had been an "ice storm". She was to begin work at 8:00 a.m. As she stepped down from the parking lot onto the sidewalk she fell. When she fell she had not yet taken a step on the sidewalk.
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> She immediately experienced severe right knee and right foot (ankle) pain. Blevins was alone and in pain. She was unable to get up and was "screaming for help". A co-worker and another person came to her aid. Someone had called an ambulance.
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> Blevins testified that she and her co-workers had been told by her supervisor, Greg Helton, not to park in the AOC lot. The AOC lot was adjacent to the courthouse annex where she worked.
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> Mr. Helton, the Circuit Court Clerk and her supervisor had told his staff "not to park there...especially on days we

were having court". They were told they could park in the lot that adjoins the sheriff's office or additional parking instead of the AOC lot.

On the morning of her injury there was only one vehicle in the AOC lot. She parked in the lot beside the sheriff's office which is directly across the street from the AOC security entrance door of the courthouse. The security entrance is accessed by a flat security electronic code key that is swiped in front of a laser and the door will unlock for the AOC employees' use.

There was no contradictory evidence that challenges Plaintiff's factual assertions with regard to this matter. A claimant's own testimony is competent and of some probative value. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky., 1977).

As testified to by both the Plaintiff and Deputy County Judge-Executive Jim Tye, the AOC parking lot is located at the end of the courthouse, which has approximately five (5) or six (6) spaces and this location would have been closer to her entrance, if she had been "allowed to use it". She testified, on the date of her injury, January 25, 2013, both courts were scheduled to convene.

Ms. Blevins testified the lot where she and her co-workers parked was the closest to the entrance door she had to use. The parking lot where Blevins and her co-workers parked was owned by both the county and the city.

Because Ms. Blevins had been told not to park in the AOC lot, she did not park there even though spaces were available. Instead, she had parked in the lot

directly across the street from the AOC security entrance. In her testimony, Ms. Blevins confirmed there are parking spaces around the courthouse which would be closer to her entrance, but Greg Helton, her supervisor, had advised "not to park there if there was other available parking because of the businesses and the apartment housing" in this area. Consequently, not only did Ms. Blevins park in the lot beside the sheriff's office, other co-workers and her supervisor, Greg Helton parked there as well. Photographic evidence (of which there is ample) was introduced and Ms. Blevins used it to explain the location of the sheriff's office, where the awning is, and the adjoining 911 office. She noted that the parking lot was elevated by a few inches and contained concrete curbs or tire stops. She had walked between the wall and the concrete curbs when she stepped down from the parking lot and immediately fell. She testified this was the exact point of her fall and marked the location on Exhibit 4 with two "Xs". Ms. Blevins further testified that when she fell she was headed to the AOC security entrance door of the courthouse annex, under the "greenish gray awning". She pointed out that the door was across the street from the Pepsi machine, at the rear of the courthouse.

The Defendant/Employer accurately states the general rule is that injuries sustained while an employee is going to or returning from the place where they regularly perform the duties connected with their employment are not deemed to arise out of and in the scope and course of their employment, as the hazards ordinarily encountered in such journeys are not incident to the employer's business. *Kaycee Coal Co. v. Short*, 450 S.W.2d 262 (Ky. 1970). In merely coming

to or going from work, an employee is exposed to risk not as an employee but rather as a member of the general public, and the Kentucky Workers' Compensation Act is not intended to compensate for injuries resulting from such risks. *Draper v. Railway Accessories Co.*, 189 S.W.2d 934 (Ky. 1945). The Defendant/Employer therefore submits that Ms. Blevins was injured while going to her place of employment and prior to when she entered the employer's operating premises. It follows that her claim is barred under the "going and coming rule."

While the Defendant/Employer acknowledges that there are exceptions to the going and coming rule, including the operating premises exception, it argues this exception does not apply in this instance.

It is pointed out that the Supreme Court of Kentucky has held that the "operating premises" rule must be applied on a case by case basis. "Of particular concern in making that determination is the extent to which the employer could control the risks associated with the area where the injury occurred." *Pierson v. Lexington Public Library*, 987 S.W.2d 316, 318 (Ky. 1999).

Two factors must be present to fix liability on the employer. First of all, the employer must control the area, and second, a work-related injury must have been sustained on the area. *K-Mart v. Schroeder*, 623 S.W.2d 900, 902 (Ky. 1981). In *Schroeder*, the employee was walking into work when she fell in an area of the parking lot that was under the control of the owner of the shopping center and not under the control of her employer, K-Mart. The Supreme Court held that the "distinguishing feature in

[that] action [was] that the injury did not occur on a parking area owned, maintained or controlled by the employer." *Id.* at 902.

In the case at hand, Blevins' employer was the Administrative Office of the Courts, which is an entity of the Commonwealth of Kentucky. The parking lot where she parked that day is owned by an individual, the city of Barbourville and Knox County. It is not owned by the AOC or the Commonwealth of Kentucky. The sidewalk where she fell is owned by the City of Barbourville. This is a public sidewalk that runs in front of numerous businesses in the middle of a town square. The AOC and the Commonwealth of Kentucky are not responsible for maintenance of the parking lot of[sic] sidewalk and have no control over the parking lot or the sidewalk where Blevins fell. There were other parking options available. Defendant/Employer argues that Blevins was not required to park where she did and traverse the sidewalk where she fell; she simply chose to park there because it was more convenient for her than parking in a different lot. Neither the parking lot where Blevins parked on January 25, 2013 nor the sidewalk where she actually fell are the operating premises of the Administrative Office of the Courts. The Defendant/Employer argues that for those reasons, Blevins' fall on the sidewalk does not fall within the operating premises exception to the "going and coming rule."

Defendant/Employer also submits that Plaintiff was not performing any service to the employer when she was injured. She was simply on her way into work that morning – the exact scenario that the going and coming rule excludes from compensability under the Act. She was

exposed to the same risks of the street that any member of the public is exposed to. Since Plaintiff was going and coming at the time of her fall, her injury is not compensable and should be dismissed.

KRS 342.0011 (1) defines work related injury as any work related traumatic event ... arising out of and in the course of employment. "In the course of," refers to the time, place and circumstances of the injury. Masonic Widows and Orphans Home v. Lewis, 330 S.W.2d 103 (Ky. 1959).

I believe that under the circumstances peculiar to this case, Ms. Blevins' injury was in the course of her employment and therefore compensable.

In Pierson v. Lexington Public Library, 987 S.W.2d 316 (Ky. 1999), also relied upon by the Defendant/Employer, the Court pointed out that the boundary line between the employer's property was not determinative of what constitutes the "operating premises" and extended coverage to a public parking lot located adjacent to the employer's premises, since that employer influenced the claimant's decision on where to park by providing her free parking in the public garage as part of the employee benefit package.

Further, in Kaycee Coal Company v. Short, 450 S.W.2d 262, (Ky., App 1970), the Court noted that the "operating premises" exception applies if an employee is enroute over a public highway from one part of his employer's premises to another part of the same employer's premises. In the unpublished opinion of Corhart Refractories v. Hyberger, 2005-CA-00598-WC (September 9, 2005) the injury was found to be compensable when the employee was

traveling from a parking lot across a public street to the main portion of the employer's premises when the accident occurred.

In the present case, there was parking assigned to the employees of the Administrative Office of the Court, but Blevins' supervisor had directed that she and other employees not park in that lot. Clearly had she been able to park in the lot assigned to the employees of AOC she would have been within the operating premises of the defendant-employer. Instead, she and other employees were directed not to park in that designated parking area nor on the street which left her with the only reasonable alternative being to park in the closest place, which was where she parked in a lot owned and maintained by the city of Barbourville and Knox County. It was when she stepped from that lot onto the sidewalk that the injury which is the subject of this claim occurred. Because of the restraints placed on where she could park Blevins parked in the closest place she could to the secured entrance to be used the AOC employees.

Given the uncontested facts surrounding the reasons why she parked where she did, I make the following findings:

1. The Plaintiff was directed by her supervisor not to park in the parking spaces assigned to employees of the Defendant/ Employer.

2. The Plaintiff parked in the closest parking lot available which was used by her supervisor and co-workers as the only reasonable option.

> 3. Had she been allowed to park in the area designated for AOC employees she would have been clearly within the operating premises adjacent to the courthouse annex.
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> 4. As she stepped down from the county/city owned parking lot onto the sidewalk she fell, resulting in the injury *sub judice*.
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> 5. From the point where she fell to the curb on the inside of the square would appear to be no more than four car lengths from the employee's entry.
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> 6. The elimination of the parking area adjacent to the courthouse put her at risk of crossing from a more distant point, but the closest point available to her.
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> 7. Her use of the jointly owned City-County parking lot was authorized by, and of benefit to her employer.
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> Thus, not only was the parking lot a part of the expanded "operating premises" of the employer, but she was performing a service to the employer by parking where she was directed to free up AOC parking spaces located directly on courthouse property for judges and other court personnel.
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> I find that under the facts of this case, the issues of Injury as defined by the ACT, Going to/coming from rule, and Scope of employment must be resolved in favor of the Plaintiff.

The AOC filed a petition for reconsideration essentially rearguing the case. The petition for

reconsideration was denied by the ALJ in an order issued July 2, 2015.

As the claimant in a workers' compensation proceeding, Blevins had the burden of proving each of the essential elements of her cause of action. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Blevins was successful in her burden, the question on appeal is whether substantial evidence existed in the record supporting the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the

same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). We find the ALJ's determination is supported by substantial evidence which he adequately explained in his decision.

As did the ALJ, we find the holding in Pierson v. Lexington Public Library, 987 S.W.2d 316 (Ky. 1999), instructive. Although the AOC did not have control over the parking area where Blevins parked, the evidence clearly established she was advised she could not park in the AOC lot. She was advised she could park in the Sheriff's lot on the days court was in session. This evidence is unrefuted. Therefore, since she was advised to park there, the Sheriff's parking lot must be deemed a part of the AOC's operating premises.

In K-Mart Discount Stores v. Schroeder, 623 S.W.2d 900, 902 (Ky. 1981), the Court concluded as follows:

> The "operating premises" rule must be applied on a case by case basis. In other words, what we are holding is

> clearly and simply that if an employer provides or maintains a parking lot or other premises for the convenience of its employees, and an employee, while on said premises, sustains a work-connected injury, then the employer is responsible to the employee for workers' compensation benefits.

The Supreme Court concluded: "The proven facts clearly and unequivocally show that Schroeder's injury did not happen on K-Mart's operating premises." Id. at 903. However, the Supreme Court pointed out that in Ratliff v. Epling, 401 S.W.2d 43 (Ky. 1966), it held as follows:

> 'We are not willing, however, to accept the boundary line of the employer's property as the proper point at which to differentiate between liability or nonliability.' We then proceeded to search for a proper theory on which liability could be related to an injury received on or off the employer's premises.
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> Id.

In Jackson Purchase Medical Associates v. Crossett, 412 S.W.3d 170 (Ky. 2013), Crossett was walking from a parking area which was designated for employee parking toward her place of employment when she suffered her injury. In that instance, JPMA asserted the same type of control over the parking area, as the employer could in Pierson, based on their lease agreement. The Court relied upon K-mart Discount Stores v. Schroeder, 623 S.W.2d at

902, in finding she was entitled to workers' compensation benefits for her injury since Crossett was not taking an unreasonable path between her car and her office. Id. at 173. The Court noted other jurisdictions also hold a worker traveling between a parking lot not owned by his employer and his place of employment may be compensated for an injury occurring on the trip. Id. *See* Woodruff World Travel, Inc. v. Industrial Comm'n, 38 Colo. App. 92, 554 P.2d 705 (1976) (holding that claimant was entitled to workers' compensation because he was injured in a parking lot which was leased by his employer); P.B. Bell & Assocs. v. Industrial Comm'n of Arizona, 142 Ariz. 501, 690 P.2d 802 (App. 1984)(holding that an injury occurring in a parking lot which was leased, but not controlled by an employer, was compensable because the employer instructed its employees to park in that lot); *Larson's Workers' Compensation Law,* § 13.04[2][c] (2013) (stating that the number of jurisdictions which do not find employee parking lot slip and falls compensable is dwindling).

We also note Hanik v. Christopher & Banks, Inc., 434 S.W.3d 20 (Ky. 2014). There, the Kentucky Supreme Court instructed the following factors should be considered by an ALJ when determining if a parking facility is within an employer's operating premises: (1) whether the employer,

either directly or indirectly, owns, maintains, or controls the parking facility or a portion thereof; (2) whether the employer designated where in the parking facility its employees are to park; (3) whether the employee parked in the designated area; and (4) whether the employee was taking a reasonable path from his/her car to his/her work station when injured. Id. at 25. The Court noted the answers to those questions require factual findings and making those findings is exclusively within the purview of the ALJ. In this instance the ALJ adequately addressed these factors in determining Blevins was injured in the course and scope of her employment and his determination will not be disturbed.

In Warrior Coal Co., LLC v. Stroud, 151 S.W.3d 29 (Ky. 2004), the Supreme Court found an injury occurring on a private access road to the Defendant/Employer's coal mine was compensable. The claimant was injured while driving his personal vehicle to work on a haul road the employer leased and maintained. In determining the injury was work-related, after citing Ratliff v. Epling, supra, the Supreme Court stated as follows:

> The theory for the exception is that coverage should apply when an injury arises from a peril that is related to the employment, regardless of whether it occurs at the actual worksite.

> Consistent with the theory, an injury that occurs while the worker is on a personal mission that substantially deviates from the employment is not viewed as being work-related even if it occurs on the employer's operating premises. *Id*. In other words, although a worker is viewed as being exposed to the risks of his employment when he crosses the threshold onto private property where the job site is located, the cause of his injury must be considered as well as the place. [citation omitted] The cause of injury may outweigh the place if it represents a significant deviation from normal coming and going activity at that place. Id. But an injury is compensable if the worker is engaged in normal coming and going activity at the time it occurs and has access to the place where it occurs because of his employment. *Id*.
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> Id. at 31.

We are persuaded Warrior Coal Co., LLC v. Stroud, supra, is applicable to the case *sub judice*. Here, Blevins parked in the parking lot where she was directed. She was there because parking spots reserved by the AOC were used by other personnel on court days. Blevins was not injured due to a significant deviation from her normal coming and going activity. In fact, Blevins would not have been at the site of her injury had she not parked where directed. In other words, but for her employment, and the request to park somewhere other than the AOC parking lot, Blevins would not have sustained her injuries. Blevins was engaged in normal

coming and going activity at the time the accident occurred and was taking the most direct route from where she had been requested to park to the entrance she was required to use. Clearly if Blevins had parked in the AOC lot when the fall occurred there would be no basis for the argument raised on appeal.

Blevins should not be excluded from coverage under the Act although her injury did not occur on the actual AOC property, because she was required to park elsewhere on the date of the accident. As part of her job, Blevins was forced to park in an alternate parking. The injuries Blevins sustained must be deemed work-related. We therefore find the ALJ's determination is not erroneous and is supported by substantial evidence.

Therefore, the May 26, 2015 Opinion, Award and Order and July 2, 2015 order denying AOC's petition for reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

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