

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 6, 2016

CLAIM NO. 201589906

ERWIN VAUGHAN

PETITIONER

VS.

APPEAL FROM HON. OTTO D. WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

JACK MARSHALL FOODS
d/b/a FRANCHISEE OF KFC
and HON. OTTO D. WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

STIVERS, Member. Erwin Vaughan ("Vaughan") appeals from the November 11, 2015, Opinion and Order and the January 29, 2016, Order on Petition for Reconsideration of Hon. Otto Daniel Wolff, Administrative Law Judge ("ALJ"). In the November 11, 2015, decision, the ALJ dismissed Vaughan's claim in its entirety finding Vaughan's fall did not occur

in or on the operating premises of Jack Marshall Foods D/B/A Franchisee of Kentucky Fried Chicken ("KFC") ("Jack Marshall").

On appeal, Vaughan asserts the Board should remand the claim to the ALJ for an analysis under the service-to-the-employer exception to the going-and-coming rule.

Vaughan's May 5, 2015, Form 101 alleges he injured his right lower extremity on February 24, 2015, in the following manner: "slipped on ice in home driveway, coming from a work-related activity, going into home to continue working; claimant's job description included working at home." The ALJ subsequently sustained Vaughan's motion to amend the Form 101 to reflect February 23, 2015, as of the date of injury.

Vaughan was deposed on July 31, 2015. At the time of his injury, Vaughan was working as the area supervisor for Jack Marshall, a franchisee for KFC restaurants. As area supervisor, Vaughan was responsible for the daily operations of four stores. He testified as follows:

Okay. I am responsible for the operations of the stores. The general managers reported directly to me. In regards to their stores they were responsible for sales, for labor, for food costs controls.

I was responsible for ensuring that they operated to KFC standards. I was responsible for doing inspections and, you know, just making sure that they were meeting the company objectives in regards to food cost, labor costs and their sales.

...

Q: Okay. Now, did you have a particular office that you reported to ever [sic] day, or are you mostly on the road or tell me about that.

A: Okay. It was mostly on the road. I maintained an office in my home.

Q: Okay.

A: With a fax machine, computer. You know, we had access to programs where I started my day off every day pulling up the numbers from my stores from the previous days.

We had a computer program that all the area supervisors and our, you know, my supervisors had access to or we could pull up the information on our stores from their previous day's sales and the inventory levels that they had punched in. You know, so that's how I started my day was at home accessing all of that information.

Q: Okay.

A: Then I would go out on the road to- I would usually visit one to two stores per day; always had to turn an itinerary in to my supervisors-

Q: Okay.

A: - as to where I was going to be. But then, you know, obviously I may have

specific incidents happen or, you know, I mean that was always flexible. I may be supposed to be in one store one day but then something happened in another and I had to, you know, reroute myself and go to the other store.

Q: Okay.

A: But I would try to visit one to two stores a day, spend time in those stores, working with them and then come back to my home and wrap up my day, make my notes, you know, enter information about my visits that day and prepare my reports that I would send in to my supervisor.

Vaughan testified regarding his home office:

Q: Okay. Fair enough. So a little bit about the working at home arrangement for Jack Marshall's, because that's, you know, an important thing here. Did Jack Marshall's pay you anything for the office that you had in your home? Did they pay rent of any kind?

A: No.

Q: Okay. Did they- I assume that they were not responsible for the upkeep of your home in any way, is it?

A: No.

Q: Okay. They didn't give you instructions as to how to work in your home, where you were to work in your home, anything like that?

A: No. Mr. Quarishi just asked, you know, if I had a desk, you know, an office space at the house.

Q: Okay.

A: But, no. There was [sic] no specific guidelines given.

Concerning his February 24, 2015, fall, Vaughan testified:

A: And I had been through my normal Monday routine where I was in the stores in Clarksville, Tennessee. It, you know, we had experienced a lot of inclement weather that week where we had snow.

And so I had been in that store in particular because we had recently lost a shift manager that was basically running the store because we did not have a general manager in the store. This was the one on Madison Street in Clarksville, Tennessee.

So I had been spending the day with them, getting them ready for their end of week. Monday was our, our week end where we did inventory. We, you know, had to input all of our inventory numbers and compile our weekly, weekly numbers that got sent to our home office in Alabama for payroll, for food cost and for profit and for sale for the week.

Q: And that's what you spent that day doing?

A: I spent that day down in that store helping with the management team to get them prepared and get their inventory level- you know, their inventory under way and had already completed, you know, most of the inventory for them to the point that they were able to wrap up that night and then enter their numbers and finish out.

I left there, drove back home where, you know, my office was where on Mondays all of my stores, as they closed in the evening and got their numbers together for the evening, they would fax me their results for the week.

Q: Okay.

A: With what their weekly sales were.

Q: I'm sorry. What time did you leave the store, approximately, if you remember?

A: About eight o'clock.

Q: Eight o'clock at night?

A: P.m., yes.

Q: Okay.

A: So I got back to the house and was going in, like I said, that's the night I would get all of my faxes from the stores with what their numbers were for the week, what their sales were, that their food cost was, what their profit was so that I could compile my reports so that I was ready for Tuesday morning to have a conversation with my supervisor, with Mr. Quarishi, about the results of the units for that week.

Q: Uh-huh.

A: When I got to the house, I parked the car, got out, gathered my computer, my briefcase and headed inside. And that's when I hit a patch of ice-

Q: Okay.

A: -in the driveway.

Q: You were outside still?

A: Yes.

Q: You hadn't made it to the house.

A: Right. I was outside, had just stepped out of the car, gotten my stuff out of the back. I, like I say, my computer briefcase, everything out of the back of the car and stepped on a patch of ice, started sliding and felt, you know, basically, you know, I mean I felt my leg break. You know, I knew there was no doubt it was broken, heard the snap.

Q: And where? Where in your leg?

A: It's in my tibia, in my lower right leg.

Q: Okay. Close to the ankle?

A: Close to the ankle. It was about two inches above the ankle.

Q: Okay.

A: And then the fibula broke about two inches below the knee.

Q: Okay.

A: So, you know, I hit the ground. You know, all my belongings fell right there beside me. I was fortunate that my cell phone was in my coat pocket. And so I was able to reach in there to call my wife who was inside to come out and get an ambulance for me.

And so they came out, you know, got blankets around me, called an ambulance. And even while I was laying there on the ground waiting for the ambulance, Mr. Quarishi, my boss,

called me to discuss, you know, what, you know, how things had gone that day.

Q: Uh-huh.

A: And to basically get a recap on the week. So it was at that point that I informed him that I was laying there with a broke [sic] leg and I would have to call him back.

Q: Okay. So did you fall down in your driveway?

A: Yes.

...

Q: Okay. I'm just thinking. Had you tried to shovel the driveway at all? Was there snow on the ground?

A: We had had it plowed.

Q: Okay.

A: I had a local landscaper come out with a plow and plow the driveway.

Q: Okay. Jack Marshall Foods didn't arrange that in any way, did they? You did that on your own.

A: Correct. I did.

Q: They didn't help you pay for that at all, did they?

A: No.

...

Q: Okay. And, again, that night when you're on your way in your house when you slipped, you mentioned that you were waiting on things from a fax or reports. Are those similar sorts of

reports that you were expecting to receive that night?

A: Yes. That's what, you know, on a Monday when they would put in their final week ending inventory-

Q: Uh-huh.

A: -then after they would run their end of day paper work, it would give them all of the reports with their weekly information, their sales numbers, their food cost numbers. And they would fax those reports to me.

Q: Okay. So you're saying the 'they' there is the individual stores would fax their stuff to you, those reports?

A: Correct.

Q: You would review those reports in anticipation of a phone call with your boss.

A: Correct.

Q: Okay. And that's what you were planning on doing that night is reviewing reports in anticipation of a call the next day?

A: Yes. I would get, those faxes would come in to me, and I would, you know, spend Monday evenings at my office compiling my numbers and, you know, analyzing, you know, their results from the previous week.

Q: Uh-huh.

A: And putting together my report so that I was ready to have that conversation with my boss on Tuesdays.

Q: Okay. Do you always have that call on Tuesdays? Is it like a standing call with your boss?

A: Yes, yes.

Vaughan also testified at the September 24, 2015, hearing. Regarding the location of his "offices," he testified as follows:

Q: When you worked for Jack Marshall Foods, you were managing four restaurants?

A: Yes.

Q: Where were those restaurants located?

A: There were two in Clarksville, Tennessee, one in Calvert City, Kentucky, and one in Mayfield, Kentucky.

Q: None in Trigg County or Cadiz?

A: No.

Q: And you live in?

A: In Trigg County in Cadiz.

Q: All right. And where was your office?

A: I have a home office that I maintained at home in Trigg County.

Q: All right. And I guess there was a place where you could do paperwork at each of these restaurants?

A: Yes.

Q: All right. So you actually have five offices?

A: Yes.

Vaughan testified he was on call every day.

A: Typically, a day would involve at least two stores. I would map out an itinerary where I would travel to Clarksville one day and visit those two, and then on another day, I would visit Calvert City and go to Mayfield and return home. I always started out everyday from home- you know, reviewing the numbers- and then I would go on my itinerary for that day to the stores that I planned to visit. And then I would return home and wrap up my day.

Q: What would happen if a manager called you on Sunday at midnight?

A: Well depending on the situation- I mean I would take the call, and depending on the situation, if it was something at the store that needed to be addressed, I would have to go in and take care of that.

Q: Would that be as routine as traveling- I mean would it be the same level of employment as traveling from one store to another-

A: Yes.

Q: -if they call at midnight on Sunday?

A: Yes.

Q: All right. So you were never off duty then?

A: No.

Vaughan testified again as to what occurred on
February 23, 2015:

A: I had left the restaurant in Clarksville, and I was returning to my home office. Monday was our end of week and so after close of business at 9:30 p.m., all of the stores would have to report in their numbers to me for the week with their sales, their food cost numbers, their labor cost numbers, and their gross profit percentages so that I could compile the report.

Q: And you were in your company car?

A: Yes.

Q: That belonged to Jack Marshall Foods?

A: Yes.

Q: All right. So what happened then?

A: When I arrived at my home to head in back to the office, I stepped out and slipped on some ice, and fell and broke my leg.

Q: Were you carrying anything?

A: I did have all of my material, my files and everything that related to each store so I could carry them into the office in order to work. I had my briefcase with my computer and my company cell phone.

Q: And you had records that related to each of the restaurants?

A: Yes.

Q: Tell whether you think carrying that satchel had anything to do with your fall?

A: Well I had both hands full and, obviously, as I went to fall, I did not have a free hand to try to catch myself.

Q: So you think what you were carrying contributed to the fall?

A: Very likely could have.

Q: Was there anything that you were carrying that was not related to your work?

A: No.

Q: So you had both hands full. What were you carrying?

A: I had a briefcase and cell phone in one hand, and I had my file folder with all of the individual restaurant files in the other hand.

Q: And the cell phone, did it belong to you?

A: It was a Jack Marshall issued cell phone.

Q: So it wasn't your phone, it was actually a company phone?

A: Right, yes.

Q: And so the telephone number of the account didn't belong to you?

A: Right.

Vaughan explained why he believes he was providing a service to his employer at the time of his fall on February 23, 2015:

A: Well I was actually heading inside to my office because Mondays did entail several more hours of work to receive the reports from the stores. And, actually, while I was there, I was still receiving phone calls from either the stores or from my supervisor. And once I went into my home office, like I said, I still had three hours worth of work to do, talking to stores, and compiling the numbers and the reports to get everything together for my conversation on Tuesday with my boss.

Q: Is Monday a day that's different than other days?

A: It is. Monday was the end of the week. That was their end of their work week. So we compiled all of our weekly numbers that we had to be reported to the home office on Monday nights, by Tuesday mornings for Jack Marshall Foods to gather their numbers together for the whole company.

Vaughan testified regarding the call he received from his supervisor after his fall:

Q: So he was actually wanting to meet with you?

A: Yes.

Q: Where?

A: The way the conversation was going and the way it sounded, I was assuming that he was wanting me to come to

Mayfield to meet him there; or he wanted to find out where I was at to see if it would be possible for me to come meet him in Mayfield.

Q: So he was wanting you to drive to Mayfield at 8:57 to meet with him?

A: Possibly.

Q: All right. So it was a discussion about whether you could meet or not?

A: Yes.

Q: Now about how many minutes has passed after you fell that that call came in?

A: About two minutes.

Q: All right. And he's a supervisor?

A: Yeah, he's director of operations. He was my supervisor.

Q: He's your direct supervisor?

A: Yes.

Q: So he calls you within two minutes after you fall to conduct business?

A: Right.

Q: All right. Did you have the right to like say I'm off duty, so I'm not going to take that call?

A: No.

Q: All right. So it's part of your duties to pick up the phone then?

A: Yes.

On August 10, 2015, the parties filed an "Agreed Motion" stating they agreed the ALJ should bifurcate the claim to determine whether Vaughan sustained the injury in the course and scope of his employment.

By order dated August 19, 2015, the ALJ bifurcated the proceedings "on the issue of whether the plaintiff's injury occurred in the course and scope of his employment and whether the injury was work-related."

The September 24, 2015, Benefit Review Conference order lists the following contested issue: "bifurcated and only issue at this time when [sic] fell was he w/in course & scope of work."

In the November 11, 2015, Opinion and Order, the ALJ set forth the following "Discussion and Determinations":

The essence of Plaintiff's contention is that his home driveway should be considered part of Defendant's business "operating premise."

The "operating premises" rule must be applied on a case-by-case basis. When an employer provides or maintains a parking area, or other area for the convenience of its employee, and the employee, while in the provided area, falls and is injured, then the employer may be liable to the employee for workers' compensation benefits. Two factors must be present to fix liability on the employer, first, the employer must control the area, and

second, a work-related injury must have been sustained in the area. An "operating premises" constitutes a part of the employee's work area, and an employee injured on such premises is to be considered performing a "work connected activity." *Kmart Discount Stores v. Schroeder*, 623 S.W.3d 900 (Ky. 1981).

In making the determination whether a particular area is a part of the employer's operating premises, a significant factor to be considered is the extent to which the employer could control the risks associated with the area. *Pierson v. Lexington Public Library*, 987 S.W.2d 316 (Ky. 1999).

The following questions are to be answered by the ALJ when determining if an area is one where the employer could control the risks associated with that area: (1) whether the employer, either directly or indirectly, owns, maintains, or controls the area or a portion thereof; (2) whether the employer designated where, in the area, its employees were 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.

The answers to these four (4) questions require factual findings and making these findings is exclusively within the purview of the ALJ. *Hanik v. Christopher & Banks, Inc.*, 434 S.W.3d 20 (Ky. 2014).

The facts herein allow these questions to be easily answered:

1. Does the employer, either directly or indirectly, own, maintain, or control the parking area or a portion there of?

Defendant did not own, maintain or control any part of Plaintiff's home driveway; consequently, the answer is "No," Defendant did not control, either directly or indirectly, the area where Plaintiff fell.

2. Did the employer designate where in the area its employees were to park. The answer to this question is "No."

3. Did the employee park in the area designated by the employer as a parking area. The answer to this question is "No."

4. Did the employee take a reasonable path from his car to his workstation? It will be assumed when Plaintiff attempted to walk from his car to the entrance of his home, he did take a reasonable path. The answers to the questions confirm Defendant had absolutely no control over the area where Plaintiff chose to park his car.

Defendant did not have any control over risks associated with the Plaintiff's home driveway.

Based upon the above, it cannot be said Plaintiff's fall occurred in Defendant's "operating premises," and, consequently Plaintiff's claim will be dismissed in its entirety.

Vaughan filed a petition for reconsideration asserting his position has always been that his injury falls under the service-to-the-employer exception to the

going-and-coming rule, yet the ALJ analyzed the case only under the "operating premises" exception. By order dated January 29, 2016, the ALJ set forth the following *additional analysis* directly addressing Vaughan's petition for reconsideration:

Plaintiff filed a Petition for Reconsideration of the November 20, 2015 Opinion and Order (Opinion) and Defendant filed a response.

Plaintiff contends the determination made in the Opinion was wrong because Plaintiff's fall was considered in the context of the "operating premises exception" to the going-and-coming rule, but the case should have been considered, or also considered, and determined in the context of the "service-to-the-employer" exception.

Pursuant to KRS 342.281 the scope of what an ALJ may reconsider on a Petition for Reconsideration is limited to the correction of errors patently appearing upon the face of the Award, Order or Decision.

This expressly narrow scope has been interpreted to permit an ALJ to make additional findings and/or to resolve issues initially presented but unresolved. *Wells v. Ford*, 714 S.W.2d 481 (Ky. 1986); *Eaton Axel Corp. v. Nally*, 688 S.W.2d 334 (Ky. 1985).

An attempt to use a Petition for Reconsideration to have original determinations of the merits of a claim reviewed, reevaluated and re-weighed, is not permissible. *Beth-Elkhorn Corp. v. Nash.*, 470 S.W.2 329 (Ky. 1971).

The undersigned remains convinced the determination in the Opinion is correct, **but a review of the Opinion does not reveal consideration of Plaintiff's fall in the context of the service-to-employer exception, so such will be done.**

The going-and-coming rule is that injuries sustained by workers' [sic] when they are 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 course of the employment as the hazards ordinarily encountered in such journeys are not incidental to the employer's business. *Kaycee Coal Co. v. Short*, 450 S.W.2d (Ky. 1970).

A hazard ordinarily encountered by people on a cold wintery day or night typically include (depending on the temperature) walking from their car, even a company car, parked on their home driveway, to the door of their home over a snowy and/or icy path. Such walk would be an ordinary common risk for any homeowner.

There is an exception to the going-and-coming rule, the "service to the employer" exception, which is applicable when the transitory activity of an employee provides some service to employer. *Olsten-Kimberly Quality Care v. Parr*, 965 S.W.2d 156 (Ky. 1998). *Standard Gravure Corp. v. Grabhorn*, 702 S.W.2d 49 (Ky. 1985).

Whether an employee is performing a service to the employer is a question of fact for the ALJ to determine. *Bowlin Group, LLC v. Padgett*, 2013-SC-000402-WC, June 11, 2015 (Unpublished), Claim No. 2011-01392.

One walking on his or her home driveway to the door of his or her home, in order to be part of the work force, is a daily, common "commuter-type" activity; *Olsten-Kimberly Quality Care v. Parr, supra*.

Plaintiff contends, because he drove a company car, kept the car at his home, did a part of his work duties at home, was on call 24/7, and travel was a requirement of his job, and, when he fell he was carrying his laptop, company cell phone, and briefcase filled with company papers he intended to work on at home, his activity of walking over the icy path to his home door should be deemed a walk that was a "service-to-his-employer."

The fact Plaintiff was provided a company car, could do part of his work at home, was on call 24/7, and was carrying work-related items when he fell, does not mean he was providing a service-to-his-employer.

If there was merit to Plaintiff's argument, then if Plaintiff entered his home, proceeded to walk directly to his at-home office, tripped on his pet-dog's toy and was injured, would that be a work-injury?

There must be a reasonable line of demarcation between Plaintiff's work-related and non-work-related activities.

It is determined Plaintiff walking from his car to his home door was not an activity of "service to his employer," his walk was a common commuter-type activity during which he was exposed to hazards ordinarily encountered by thousands of Kentucky workers every winter. (emphasis added).

This Board's tenuous understanding of Vaughan's argument is that the ALJ neither performed an analysis addressing the service-to-the-employer exception nor wrote a "new opinion." Thus, it appears that Vaughan is not challenging the adequacy of the ALJ's analysis or his ultimate conclusion; rather, he is challenging whether an analysis was performed. A careful review of the January 29, 2016, Order on Petition for Reconsideration reveals *ten paragraphs of analysis* of Vaughan's claim under the service-to-the-employer exception and a *conclusion* that the facts of this case do not fall under this exception.

The general rule is that injuries sustained by workers when they are 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 course of the employment as the hazards ordinarily encountered in such journeys are not incident to the employer's business. Kaycee Coal Company v. Short, 450 S.W.2d 262 (Ky. 1970). As pointed out, however, in Receveur Construction Company/Realm, Inc. v. Rogers, 958 S.W.2d 18 (Ky. 1997) the general rule is subject to several exceptions.

In Receveur, supra, the employer's construction company was located in Louisville and the employee's

residence was in Campbellsville. He worked at remote job sites around the region. Shortly before the fatal automobile accident giving rise to the claim, Rogers had been promoted to project superintendent and issued a company vehicle. The truck was equipped with a CB radio that allowed him to communicate with Receveur Central Office during the day. The truck was to be used as a means of transportation both during the course of the work day and between Rogers' home and job site so he would not be required to first go to the central office in Louisville. Rogers was provided a credit card to cover the cost of gasoline for the vehicle. He was not paid for travel time between his home and work though he was paid for travel time between the central office and remote job sites. On the day of the accident, Rogers had been working a shift with a co-employee at a remote job site in Indiana. The two men returned together in the company truck to the central office in Louisville where they unloaded a truckload of rubbish. The co-employee then went home in his own vehicle and Rogers left for home in the company truck. The accident occurred while Rogers was in route to his home.

In Receveur, supra, the Kentucky Supreme Court acknowledged:

The general rule is that injuries sustained by workers when they are 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 course of the employment as hazards ordinarily encountered in such journeys are not incident to the employer's business. See Kaycee Coal Co. v. Short, 450 S.W. 2d 262 (Ky. 1970).

Id. at 20.

Nonetheless, the Supreme Court held the accident to be compensable under the "service to the employer" exception. Id. citing Standard Gravure Corporation v. Grabhorn, 702 S.W. 2d 49 (Ky. App. 1985); Spurgeon v. Blue Diamond Coal Company, 469 S.W. 2d 550 (Ky. 1971); Ratliff v. Epling, 401 S.W. 2d 43 (Ky. 1966); Palmer v. Main, 209 Ky. 226, 272 S.W. 2d 736 (Ky. 1925). In its reasoning, the Supreme Court did not focus on the particular trip during which the accident occurred. Rather, the Supreme Court looked at the benefit the employer received generally from Rogers' use of the company vehicle. The Supreme Court applied "some benefit" test to the particular facts and in finding work-relatedness stated:

Therefore, based on our interpretation of the applicable case law as summarized above, as well as the facts presented in the case at bar, it appears that there was substantial evidence to support a conclusion that Rogers' use of the company truck was of

benefit to the company. The employer's purpose in providing such a vehicle to Rogers was to allow him to better perform the requirements and completion of his duties. Included within such objective was the premise that use of the company truck as transportation between Rogers' home and the job site would allow Rogers to begin his actual duties earlier, and to remain productive longer, by avoiding a stop at the company's business office in Louisville.

Thus, although the use of such a conveyance was a convenience for Rogers, it was primarily of benefit to the employer. Hence, as it can be concluded that Rogers was performing a service to the employer at the time of his death, it can be determined that his death was work-related under the service to the employer exception to the going and coming rule.

...

Therefore, regardless of the fact that the ALJ may have applied an unrecognized theory in reaching his conclusion, since there was substantial evidence that the use of the company vehicle acted as a direct benefit to the employer as being in furtherance of the employer's business, there was substantial evidence to support the conclusion that Rogers' death occurred in and during the course and scope of his employment.

Id. at 21.

The Court of Appeals applied the "some benefit" doctrine expressed in Receveur, supra in the case of Bailey Port v. Kern, 187 S.W. 3d 329 (Ky. App. 2006). In Bailey

Port, supra, the claimant Kern was supplied a company vehicle. Kern sustained injuries when involved in a motor vehicle accident while driving home from work in the company owned vehicle. Kern kept tools in the vehicle and was on call all times of the day and sometimes at night. The court discussed the holding in Receveur, supra, in connection with the evidence before it. It found the evidence established that Kern was given the use of the vehicle for the company's benefit and not for himself. The Court found significant the facts Kern stored his tools in the company vehicle and the company allowed him to travel directly to a job site instead of stopping at the place of work to pick up his tools.

The "benefit to the employer" rule as adopted by the court in Receveur requires a weighing of the facts particular to a specific claim. Thus, the ALJ as fact-finder has the authority to rely on facts he deems most important and engage in that weighing process. As concluded by the ALJ in the January 29, 2016, Order on Petition for Reconsideration, "[t]he fact Plaintiff was provided a company car, could do part of his work at home, was on call 24/7, and was carrying work-related items when he fell, does not mean he was providing a service-to-his-employer." As further stated by the ALJ, "[t]here must be a reasonable

line of demarcation between Plaintiff's work-related and non-work related activities," and Vaughan walking into his home, despite having a home office and expecting to continue working that evening, does not fall under the "service to the employer" exception. He was, simply stated, walking into his home when he fell. While Vaughan may disagree with this conclusion, this does not persuade the Board to remand the claim to the ALJ for additional analysis.

Accordingly, the November 11, 2015, Opinion and Order and the January 29, 2016, Order on Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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