

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 8, 2019

CLAIM NO. 201701484

AIMEE TIMMONS

PETITIONER

VS.

APPEAL FROM HON. JEFF V. LAYSON, III,
ADMINISTRATIVE LAW JUDGE

COMMONWEALTH OF KENTUCKY
and HON. JEFF V. LAYSON, III,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
REVERSING & REMANDING

* * * * *

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

STIVERS, Member. Aimee Timmons (“Timmons”) appeals from the July 25, 2019, Opinion and Order of Hon. Jeff V. Layson, III, Administrative Law Judge (“ALJ”) dismissing Timmons’ claim for failing to prove her injury occurred within the course and scope of her employment with the Commonwealth of Kentucky (“Commonwealth”). On appeal, Timmons asserts the ALJ erred in dismissing her claim and urges this Board to reverse and remand the claim for an award of benefits.

BACKGROUND

The Form 101 alleges Timmons sustained a work-related injury to her “lower leg” on June 17, 2017, when she fell going down the steps.

The April 30, 2019, Benefit Review Conference (“BRC”) Order and Memorandum lists the following contested issues: work-related injury/causation, permanent income benefits per KRS 342.730, TTD benefits, unpaid or contested medical expenses, proper use of the AMA Guides, and “injury” as defined by the Act.

Timmons was deposed on October 30, 2017. She began working for the Commonwealth in 2002. Her job title at the time of her injury was “social services clinician.” At the time of her deposition, she was performing her pre-injury job. Her office is located in Mayfield, Kentucky. She testified as follows:

Q: Okay. Let’s see. Do you go to this physical – this physical location – this 333 Charles Drive, do you go there on a consistent and weekly basis? Is that where you get the majority of your work done?

A: I do home visits. So I mean – but normally I start the day there. I go in at 7:30, so normally my clients don’t want me coming to their house at 7:30.

Q: Okay.

A: So traditionally I would go to the office and have appointments thereafter.

Timmons detailed the day-to-day operations of her job:

A: I mean like today, I made phone calls to clients to schedule home visits for next month. You know, some days I may be only in the office doing paperwork. Other days I may pick up my notebook from the office and not be back the rest of the day. I do training for foster parents as needed as assigned to me at whatever location they have selected to use.

I mean that's pretty much – I mean I schedule my day myself. So –

Q: And then I'll ask you just from a general standpoint, what – what's the overall goal, I guess, of your position as a social services clinician? What are your specific goals and job functions?

Just if you were explaining to me – I kind of have an understanding of what you do on a daily basis of what you've said. But what is your ultimate aim of that? Are you placing foster children? Are you –

A: Yes. I mean I have days that are assigned to me to work on placements of children that are coming into foster care. And I do certification of new foster parents, training of new foster parents and quarterly visits to foster homes.

Q: Okay. So I guess you're involved in that process of deciding, you know, so and so is a good fit with these people or this person; is that right?

A: Yes.

Her work schedule at the time of her fall was Monday through Friday,

8 to 4:30.

She recounted what occurred on the morning of Saturday, June 17,

2017:

A: I was going to the location of the training and walked out my front door carrying my notebook and purse and stepped down my steps and fell.

Q: Okay. I apologize. I'm going slow. I'm writing as you are talking. So I wish I could type faster and do that but I can't multitask like that.

So you are going out the front door of your own personal home; is that right?

A: Yes.

Q: Okay. How many steps were there?

A: I believe there's three.

Q: Okay. Are they concrete steps or brick or –

A: Concrete.

Q: Okay. So when you fell, did you fall – kind of, I guess, explain to me how you fell, how you landed, all of that stuff in particular if you could.

A: I mean it just – it happened really quickly. I mean within ten seconds I was at the top of the steps and I was at the bottom of the steps. I stepped off the top step and fell; then I was laying on the sidewalk screaming.

Q: Okay. Did anybody see this happen?

A: No. It was at like 7:15 in the morning.

Q: Okay. Pretty early on a Saturday?

A: Yeah.

Q: Did you contact anyone from work to report this injury? Did you contact Ms. Johnson or anyone?

A: I called my cotrainer [sic] because she was expecting me to train with her that day. So I called her and told her, sorry, the two hours I'm supposed to do you are stuck doing or, you know, find someone else in the next hour to cover my responsibilities.

...

Q: Okay. And then I'll ask you, where were you going on that Saturday morning? What was the location and then what were you going to do?

A: Liberty Baptist Church in Hickory, Kentucky and I was training trauma to foster parents.

Timmons has worked out of the Mayfield office for ten years. She testified as follows:

Q: All right. How much of your time is spent in the office in Mayfield and how much of your time is spent out away from the office making home visits or other things?

A: It varies because visits are quarterly to my foster homes. So some months I have, you know, 15 or, you know, so visits. Some months I will have less visits. If we have training that I'm required to facilitate, you know, I will be outside the office. So it really varies depending on what I'm assigned to do.

Q: Okay. Do you cover a specific geographic area in the home visits?

A: Right now I have foster homes in Graves County, Marshall County, Calloway County and McCracken County.

Q: All right. When you are working outside the office, either for home visits or other parts of your job, do you get paid for that time?

A: Yes.

Timmons provided additional detail regarding her contemplated work at the church the day of her fall:

Q: Now, you said that this accident happened on a Saturday at about 7:15 a.m. and that you were on your way to the Liberty Baptist Church in Hickory, Kentucky. What were you going to be doing at that church?

A: Training foster parents in trauma and care. It was the third session of three sessions that were held which I cotrained [sic] the first session two weeks prior on a Saturday and had work time from 7:30 a.m. until 12:30. And then the second Saturday I missed because my grandmother passed. And then the third Saturday, I fell.

Q: All right. So this was a three-part training?

A: Yes.

Q: Each part done on a Saturday?

A: Yes.

Q: And was this a part of your official job duties with the state?

A: Yes.

Q: And the fact that it was being done at a church, is that just – that was a convenient place to have it or –

A: Yes. We just use whatever location that we can find to accommodate whatever schedule we have selected to do trainings on.

Q: All right. And were there coworkers of yours also involved in this training?

A: Yes. I had a cofacilitator [sic], Kelly Covington.

She reiterated the events surrounding her fall:

Q: Now, at the time this happened, had you already exited your house?

A: Yes.

Q: Had you closed the door?

A: Yes.

Q: And then turned to go down the steps?

A: Yes.

Q: And in the process of descending the steps is when you fell?

A: Yes.

Timmons addressed how she is compensated when she is required to travel:

Q: Are you paid from the time you leave your house until the time you get back home when you are doing one of these offsite trainings?

A: Yes.

Q: So the first of these three sessions, you said, was two weeks prior to this. Did you get paid from 7:30 in the morning until 12:30 in the afternoon?

A: Yes.

Q: And I'm assuming 7:30 is when you left your house and then 12:30 is when you got back home?

A: Yes.

...

Q: I don't think I asked you this specific question, but when you do the home visits, do you get paid for the time that you are traveling to and from the foster parents' home?

A: Yes.

Q: Do you also get paid mileage for the travel to and from the foster parents' homes?

A: Yes.

Q: Any other work that you do on your job away from the office, besides the home visits and the training session like you were going to at the time of this incident?

A: Other than required training that I have to participate in as far as, you know, continuing education training. That's the only other time I would be away from the office.

Q: Do you get paid for that?

A: Yes.

Q: Okay. So if you have to go somewhere to receive training yourself as a part of your job, you are paid for that time?

A: Yes.

Timmons also testified at the May 29, 2019, hearing.¹ She once again testified regarding her duties as a social worker for the Commonwealth at the time of her injury:

A: I made quarterly home visits to foster parents who were approved. I went through the approval process with new foster parents and facilitate training for at the time foster parents, as well as ongoing training for foster parents.

Q: Did you have an office somewhere that you worked out of?

A: I did.

Q: Where is that?

A: It was 333 Charles Drive, Mayfield at the time.

Q: Now, in addition to working at that office, did you work at other locations? And by other locations, I mean anywhere other than that address that you gave us, either at somebody's home, community center, wherever?

A: Well, when we did outside trainings, I would work at a location that was specified by my supervisor, whatever they could find to accommodate our training. I also did work in – obviously in the foster homes meeting with foster parents.

Q: What counties did you work in?

A: McCracken, Calloway, Graves, and Marshall.

¹ At the time of the hearing, Timmons' name was Aimee Timmons Sutton.

Q: Now when you were working away from the Mayfield office, whether it was a home visit or instruction that you were giving to foster parents, were you paid for all of that time?

A: Yes.

Q: Including the time that it took to travel to those locations?

A: Yes.

Q: Were you also paid mileage for the miles that you traveled in your car?

A: Yes.

Q: To go to and from those locations?

A: Yes.

She again recounted the Saturday, June 17, 2017, event:

Q: I want to take you now to Saturday, June the 17th of 2017. Were you working that day?

A: Yes.

Q: What days of the week did you normally work?

A: Monday through Friday.

Q: So was this a bit unusual that you were asked to work on a Saturday?

A: Yes.

Q: Where were you going to be performing work that day?

A: It was at a church. I don't remember the name of the church but was a local church there in Graves County.

Q: Okay. I believe there is evidence that it was in Hickory, Kentucky?

A: Yes.

Q: Okay. What were you going to be doing there?

A: Facilitating, I believe it was the trauma informed care training for foster parents.

Q: So these are foster parents that are required to undergo some training by the state in order to be foster parents?

A: To continue their approval as foster parents or I think at that time, it was actually a requirement before they could be approved.

Q: All right. And what were you going to do?

A: To facilitate the training for the foster parents.

Q: Was there anyone else working for the state in that particular training that day?

A: Yes, there was.

Q: Who?

A: Kelly Covington.

Q: How long had this particular training been going on?

A: It was three consecutive Saturdays.

Q: Okay. And was this the first, second, or third of the session?

A: The third.

Q: Okay. Had you already participated in one or more sessions of this training?

A: The first one. The second one, I'd had a family – a death in my family so I wasn't able to go. But the first one, I did.

Q: Were these three consecutive Saturdays?

A: Yes.

Q: All right. Going back to the first of those three Saturdays, that would be June the 3rd of 2017?

A: Yes.

Q: Were you paid from the time that you left your house until the time you got back to your house that day?

A: Yes.

Q: All right. If you would, just tell us what happened to you on Saturday, June 17.

A: I had – I was carrying a three ring binder and my purse. I'd closed the door to the house and my car was maybe 30, 35 steps from my front door. I was going down the porch steps and fell.

Q: When had you gotten up that morning?

A: Probably around 6:00 a.m.

Q: And you were leaving the house at what time?

A: Around 7:15.

Q: If it were not for this work that you had to do that day, would you have been out at 7:15 on a Saturday morning?

A: Not – not typically. I mean, there may have been some other time for some reason I could have but standardly, no. On Saturday, I'm not going to get up at 7:15 and be outside for any reason.

Q: All right. You mentioned that you had a three ring binder?

A: It was about a three inch –

Q: Three inch binder?

A: It was a three ring, three inch binder.

Q: All right.

A: It was big.

Q: And what was in the binder?

A: The training manual.

Q: Okay. So you had the binder and you also had a purse, I think you said?

A: Yes.

Q: And you were going down the steps?

A: Yes.

Q: Had you already closed and locked the door to your house?

A: Yes.

Q: If you would just pick up there and tell us what happened.

A: I started at the top of the steps and within ten seconds or so, I was at the bottom on the sidewalk. And initially thought I had twisted my ankle so I was screaming. But all the neighbors, I guess, were sound asleep because no one heard me until my son, who was in one room, finally heard me and came outside and called the ambulance.

Timmons explained she was going to the church early to setup for the training.

A: Because there was a setup involved and I can't recall the exact setup needed on that day, but it obviously is not a location that was already prepared. Or we may have prepared the night before, I can't remember. But we do have to set up a projector or get the materials out for the participants, you know, make sure everything is available.

Q: All right.

A: I study the material at the church, how I'm going to present it and make sure the slides are, you know, are going to be accurate to our presentation. So I wouldn't

have gotten there the minute the people are supposed to be there.

At the time of the hearing, Timmons was working for the Department for Juvenile Justice at the McCracken County Regional Juvenile Detention Center as a counselor.

Timmons confirmed the Commonwealth does not perform any type of work on her personal residence, including her front steps. She also confirmed the car she was using on Saturday, June 17, 2017, was her own personal vehicle.

Marcia Morganti (“Morganti”), a Service Region Administrator Associate with the Commonwealth at the time of Timmons’ fall, also testified at the hearing. Morganti confirmed Timmons was not paid for June 17, 2017. Regarding payment for the training Timmons conducted on Saturday, June 3, 2017, Morganti testified as follows:

Q: Okay. So if we look at June 3 on this Plaintiff’s Exhibit 1, does it indicate that Ms. Timmons did work that day?

A: Yes. It shows that she worked five hours of overtime on June 3rd of 2017.

Q: And does it have the time of day that she began and the time of day that her work ended?

A: Yes, sir. It began at 7:30 and ended at 10 – at 12:30 p.m.

Q: You heard Ms. Timmons testify that on that day of June 3rd, she was paid from the time she left her house until the time she got back home. Do you have any reason to doubt or dispute that?

A: From this document, it appears that Ms. Timmons submitted five hours of overtime and would have been paid for that.

Q: That's not the question, though. My question is whether you have any reason to dispute her testimony that she was paid from the time she left her house until the time she got back to her house?

A: I can only assume since she put on here that at 7:30, that that's when she left to go to the training.

In the July 25, 2019, Opinion and Order, the ALJ set forth the following analysis and findings:

DISCUSSION, ANALYSIS AND FINDINGS

...

KRS 342.0011(1) defines the term "injury" as follows:

"Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, **arising out of and in the course of employment** which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. (Emphasis added).

There is no dispute that Ms. Timmons suffered a traumatic event when she tripped and fell down the steps leading from her front porch on June 17, 2017. There is also no disagreement that she was leaving her home to go to work when the accident occurred. The threshold issue in this case is whether these facts constitute an incident which occurred within the course and scope of her employment as a social worker by the Commonwealth of Kentucky. The term "in the course of" refers to the time, place and circumstances of an accident. *Masonic Widows and Orphans Home v. Lewis*, 330 S.W.2d 103 (Ky. 1959).

The "going and coming" rule in workers' compensation cases stands for the proposition that, as a general matter, injuries sustained while an employee is going to or coming from their regular place of employment do not arise out of or in the course of that employment. *Kaycee Coal Co. v. Short*, 450 S.W.2d 262 (Ky. 1970). However, when the job itself requires travel

away from the employer's premises, the worker is considered to be acting for the benefit of the employer and, therefore, within the course of employment during the entire trip, unless a distinct departure on a personal errand is shown. *Black v. Tichenor*, 396 S.W.2d 794 (Ky. 1965).

In this case, Ms. Timmons was scheduled to conduct a training session at a location away from her employer's premises which required work-related travel to the church in Hickory, Kentucky. Therefore, the act of travelling between her home and the church was a benefit to the employer and outside the scope of the "going and coming" rule. *Olsten-Kimberly Quality Care v. Parr*, 965 S.W.2d 156 (Ky. 1998). The Plaintiff is correct when she states in her brief that "if Ms. Timmons were involved in a traffic accident on the way to the training session, there could be no argument about coverage."

The question remains, however, whether the specific act of walking down the steps leading from her front porch to go to her car constitutes work-related travel. As the Defendant/Employer pointed out in its brief, the law does not support a finding that Ms. Timmons' front porch is deemed to be part of the employer's operating premises because there is no evidence that it is a location which is directly or indirectly owned, maintained, controlled, or designated for use by the employer. Therefore, in order to resolve this issue, it is necessary to determine the specific point at which the work-related trip began.

The evidence in this case confirms that, as a general matter, Ms. Timmons was paid for her travel time and mileage to and from off-premises worksites such as the church used for the training session in this case. The Plaintiff has presented evidence that Ms. Timmons was in fact paid for her travel between her home and an off-site location when she participated in a similar training session a couple of weeks before the date of the injury. The Defendant/Employer does not dispute that assertion but points out that Ms. Timmons was never paid any wages for June 17, 2017 because, in their opinion, she had not yet begun her work-related travel when the injury occurred.

The Administrative Law Judge does not find these arguments regarding when and whether Ms. Timmons

was paid to be particularly relevant. There is no evidence that, prior to the injury on June 17, 2017, either party gave any thought to whether work-related travel begins when the Plaintiff walks out of the door of her house or when her car leaves the driveway. It is certainly understandable that now, after the injury, the parties have strong opinions on this issue which benefit their respective positions in this case. However, the Administrative Law Judge does not believe that, prior to this injury, the miniscule amount of time that it took to walk from the door of the house to the car was ever taken into consideration when the Plaintiff turned in her time or when the Defendant/Employer calculated her Ms. Timmons' wages.

What is relevant in this case is the time, place and circumstances of the accident, i.e. whether the act of walking from the front door of the house to the car is an activity which is of benefit to the employer. Walking down the steps of her front porch in order to leave her house to go to work is something Ms. Timmons would have had to do regardless of whether she was driving to the employer's premises (which would not be covered per the "going and coming" rule) or whether she was driving to an off-site location (which would fall under an exception to the "going and coming" rule). As the Defendant/Employer asserted in its brief, an employee who is walking from his house to his car in order to go to work is engaged in a common "commuter-type" function which is more akin to the type of activity which is subject to the "going and coming" rule rather than an activity which is for the benefit of the employer.

Injuries which occur during work-related travel are compensable because the travel is different than regular "going and coming" travel in that there is a specific benefit to the business of the employer. That difference does not arise until after the employee actually deviates from the routine which she would otherwise engage in were she simply going to the office. The act of walking from her front porch to her car is something that Ms. Timmon's [sic] would have done regardless of where she was going to work that day and, therefore, cannot be considered something unique that was done for the benefit of the employer.

Based on the foregoing, the Administrative Law Judge finds that the traumatic event which occurred on June 17, 2017 did not occur within the course [sic] scope of the Plaintiff's employment with the Defendant/Employer.

Having determined that the Plaintiff did not sustain a work-related injury as defined by the Act, it is not necessary to address any of the other issues preserved for a decision in this case.

**FINDINGS OF FACT AND CONCLUSIONS OF
LAW**

1. The facts as stipulated.

2. The injury which the Plaintiff sustained to her left leg on June 17, 2017 did not occur within the course and scope of her employment with the Defendant/Employer.

No petition for reconsideration was filed.

Timmons argues the ALJ erred in dismissing her claim asserting, in part, as follows:

Even though he acknowledges that the sole purpose of her trip was to conduct the training session for her employer, he holds that her injury was covered only if it occurred after she deviated from what would have been her usual route to the office in Mayfield. Using that logic, if she had been struck by a vehicle while backing out of her driveway, she would not be covered. The ALJ's reasoning places Ms. Timmons under the 'going and coming' rule even though she was not going to her regular place of employment.

We reverse the ALJ's determination Timmons' injury did not occur within the course and scope of her employment and remand for a resolution of the remainder of Timmons' claim on the merits.

ANALYSIS

As the claimant in a workers' compensation proceeding, Timmons had the burden of proving each of the essential elements of her cause of action, including whether his injury occurred within the course and scope of her employment. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Timmons was unsuccessful, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

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 discretion to determine 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The function of this Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under

the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986). That said, because the facts in this case are not in dispute and Timmons has raised a purely legal question, our review is *de novo*. See Bowerman v. Black Equipment Co., 297 S.W.3d 858 (Ky. App. 2009). Further, since the facts are not in dispute, filing a petition for reconsideration before the ALJ was unnecessary.

KRS 342.0011(1) defines "injury" as a work-related traumatic event "arising out of and in the course of employment" that is the proximate cause producing a harmful change in the human organism. It has long been established "in the course of employment" refers to the time, place, and circumstances of an accident, while "arising out of" refers to the cause or source of the accident. AK Steele Corp. vs. Adkins, 253 S.W.3d 59 (Ky. 2008).

The "going and coming" rule establishes 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." Receveur Construction

Company/Realm, Inc. v. Rogers, 958 S.W.2d 18 (Ky. 1997). *See also* Olsten-Kimberly Quality Care v. Parr, 965 S.W.2d 155, 157 (Ky. 1998); Baskin v. Community Towel Service, 466 S.W.2d 456 (Ky. 1971); Kaycee Coal Co. v. Short, 450 S.W.2d 262 (Ky. 1970). The “going and coming” rule generally applies to travel to and from a fixed-site or regular place of work where an employee’s substantial employment duties begin and end. 82 Am.Jur.2d Workers' Compensation §270 (2003); Larson’s Workmen’s Compensation §13.01[1].

One rationale behind the “going and coming” rule is that going to and coming from work is the product of the employee’s own decision on where to live, a matter ordinarily of no import to the employer. Collins v. Kelley, No. 2002-CA-002472-MR, 2004 WL 1231633 (Ky. App. 2004). There are exceptions to the “going and coming” rule, one of which is the “service to employer” exception, and triggering this exception is what is known as the “traveling employee” doctrine.²

Professor Larson, in his renowned treatise, states as follows regarding the “traveling employee” doctrine: “Employees whose work entails travel away from the employer’s premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown.” Larson’s Workmen’s Compensation, § 25.01. (emphasis added).

² The “operating premises” exception clearly has no applicability in the case *sub judice* and will not be discussed.

Offering further clarity to the “traveling employee” doctrine is Black v. Tichenor, 396 S.W.2d 794, 796-797 (Ky. 1965) in which the Court of Appeals held as follows:

It is quite a different thing to go to and from a work site away from the regular place of employment, than it is to go to and from one’s home to one’s usual place of employment; it is the latter which generally comes within the so-called ‘going and coming rule’ absolving employers from Workmen’s Compensation liability. The former comes within the principle stated in Larson, Workmen’s Compensation Law, Vol. 1, Sec. 25.00: ‘Employees whose work entails travel away from the employer’s premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable.’ Turner Day & Woolworth Handle Company v. Pennington, 250 Ky. 433, 63 S.W.2d 490 [(1933)]; Standard Oil Company v. Witt, 283 Ky. 327, 141 S.W.2d 271 [(1940)].

Also instructive is Olsten-Kimberly Quality Care v. Parr, 965 S.W.2d 155 (Ky. 1998). In Parr, supra, the claimant worked as a certified nursing assistant for an employer which provided home health care services. The claimant received weekly assignments over the telephone and did not report to or work from the employer’s physical office. The claimant was responsible for providing her own means of transportation to and from the patients’ homes. She was compensated for mileage incurred when providing services to non-private patients, but not for mileage incurred when providing services to private patients. The claimant was involved in a motor vehicle accident while traveling from a patient’s residence to her home. She had intended to complete required paperwork when she returned to her home to then mail

to her employer. Id. at 156. The Supreme Court affirmed the Court of Appeals in finding the claimant's injury was sustained within the course and scope of her employment. After reviewing the "going and coming" rule and the traveling employee exception, the Court stated as follows:

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. See Kaycee Coal Co. v. Short, Ky., 450 S.W.2d 262 (1970). However, this general rule is subject to several exceptions. For example, transitory activities of employees are covered if they are providing some service to the employer, *i.e.*, service to the employer exception. See Standard Gravure Corp. v. Grabhorn, Ky.App., 702 S.W.2d 49 (1985); Spurgeon v. Blue Diamond Coal Co., Ky., 469 S.W.2d 550 (1971); Ratliff v. Epling, Ky., 401 S.W.2d 43 (1966); Palmer v. Main, 209 Ky. 226, 272 S.W. 736 (1925).

Thus, work-related travel has come to mean travel which is for the convenience of the employer as opposed to travel for the convenience of the employee. See Brown v. Owsley, Ky.App., 564 S.W.2d 843 (1978); Howard D. Sturgill & Sons v. Fairchild, Ky., 647 S.W.2d 796 (1983); Farris v. Huston Barger Masonry, Inc., Ky., 780 S.W.2d 611 (1989); Applegate v. Hord, Ky., 373 S.W.2d 430 (1963); Hall v. Spurlock, Ky., 310 S.W.2d 259 (1957); Turner Day & Woolworth Handle Co. v. Pennington, 250 Ky. 433, 63 S.W.2d 490 (1933). Also, see this Court's recent opinion in the case of Receveur Construction Co./Realm, Inc. v. Rogers, Ky., 958 S.W.2d 18 (1997), for a more detailed recitation.

Even more appropriate to the case at bar is the idea that "[w]hen travel is a requirement of employment and is implicit in the understanding between the employee and the employer at the time the employment contract was entered into, then injuries which occur going to or coming from a work place will generally be held to be work-related and compensable, except when a distinct

departure or deviation on a personal errand is shown.” William S. Haynes, *Kentucky Jurisprudence, Workers' Compensation*, § 10-3 (revised 1990). Also see *Black v. Tichenor*, Ky., 396 S.W.2d 794 (1965), and *Handy v. Kentucky State Highway Dep't*, Ky., 335 S.W.2d 560 (1960).

Id. at 157.

In sum, for the "traveling employee doctrine" to be applicable, the travel involved must be to or from a site other than a fixed work site. See Spurgeon v. Blue Diamond Coal Co., Ky., 469 S.W.2d 550, 553 (1971); and Husman Snack Foods Co. v. Dillon, Ky.App., 591 S.W.2d 701 (1979). As articulated by the Court of Appeals in Spurgeon, supra, “the employee is not performing any service for the employer merely by traveling to and from a fixed work site.” Spurgeon at 553. However, if an employer sends an employee “upon a special errand,” such action places that employee “within the penumbra of the act.” Id.

In the case *sub judice*, the ALJ correctly concluded “the act of travelling between [Timmons’] home and the church was a benefit to the employer and outside the scope of the ‘going and coming’ rule.” The ALJ also correctly held that, ‘if Ms. Timmons were involved in a traffic accident on the way to the training session, there could be no argument about coverage.’ Nonetheless, where we believe the ALJ evinces an erroneous understanding of the law is in the following analysis:

Injuries which occur during work-related travel are compensable because the travel is different than regular ‘going and coming’ travel in that there is a specific benefits to the business of the employer. **That difference does not arise until after the employee actually deviates from the routine which she would otherwise engage in were she simply going to the office. The act of walking from her front porch to her car is something that Ms. Timmon’s [sic] would have done regardless of where she was going to work that day and, therefore, cannot**

be considered something unique that was done for the benefit of the employer. (emphasis added).

The above-cited portion of the ALJ's analysis is self-contradictory, as the ALJ, earlier in his opinion and order, held there would be no argument regarding coverage if Timmons had been involved in a traffic accident on the way to the training session. This begs the question, pursuant to the above-highlighted rationale, would the accident and resultant injuries not have to occur *after* Timmons deviated from her normal routine in which she engaged going to her Mayfield office before being found compensable? Consequently, under the above-highlighted rationale, if Timmons had been involved in a car accident backing out of her driveway on the morning of Saturday, June 17, 2017, as Timmons queried in her appeal brief, her injuries would not be compensable. This would lead to a profound undoing of the "traveling employee"/"benefit to employer" exception.

As acknowledged by the ALJ in the July 25, 2019, Opinion and Order, the facts are not in dispute. Timmons was in the process of walking down the steps of her personal residence and to her car on a Saturday morning, a day different from her normal Monday through Friday work schedule, in order to travel to a location different from her fixed work site in Mayfield to conduct a training session. As testified to by Timmons, but for the Commonwealth requiring her to conduct the training session as a function of her employment, she would not have been walking down her steps and to her car, thick work binder in hand, in the early morning hours of Saturday, June 17, 2017. These actions fit squarely into the "special errand" category articulated by the Court in Spurgeon and the "traveling employee"/"service to employer" exception. Spurgeon at 553. That she was providing a service to her employer is further

supported by the fact that Timmons was paid for the second of the three-part training session she conducted on June 3, 2017, from the moment she left her house at 7:30 a.m. Importantly, the third and final training session Timmons was to conduct was on June 17, 2017. While Timmons was not paid for June 17, 2017, because she was unable to attend the session after her fall, logic dictates she would have been paid in a similar manner to June 3.

As stated by Professor Larson in § 25.01, when employees are required to travel away from a fixed site, injuries are considered to be occurring within the course and scope of their employment “*continuously during the trip*” unless the employees run a personal errand. As concluded by the ALJ, “the act of travelling between [Timmons’] home and the church was a benefit to the employer and outside the scope of the ‘going and coming’ rule.” Therefore, pursuant to the applicable law, *the continuum of her efforts on the morning of Saturday, June 17, 2017*, including walking down the steps of her residence with her binder towards her car, also provided a service to the Commonwealth, thereby fitting within the “traveling employee”/“service to employer” exception and compelling a different conclusion than that reached by the ALJ.

Accordingly, the ALJ’s determination that Timmons’ injury occurring on the morning of Saturday, June 17, 2017, did not occur within the course and scope of her employment, as held in the July 25, 2019, Opinion and Order, is **REVERSED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion holding Timmons’ fall and resulting injury to her left leg occurred within the course and scope

of her employment and therefore comprises an “injury” as defined by the Act. The ALJ shall also resolve the remaining contested issues of Timmons’ claim.

ALVEY, CHAIRMAN, CONCURS.

RECHTER, MEMBER, DISSENTS WITHOUT SEPARATE
OPINION.

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