Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 10, 2020

CLAIM NO. 201766423

DEE WHITAKER CONCRETE PETITIONER

VS. **APPEAL FROM HON. RICHARD E. NEAL, ADMINISTRATIVE LAW JUDGE**

AUSTIN ELLISON AND
HON. RICHARD E. NEAL,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Dee Whitaker Concrete ("Whitaker") appeals from the Interlocutory Opinion and Order rendered August 7, 2018 by Hon. Richard E. Neal, Administrative Law Judge ("ALJ"), and from the Opinion, Award, and Order he issued on December 9, 2019. The ALJ found Austin Ellison ("Ellison") was injured in a motor vehicle accident ("MVA") while working for Whitaker on August 4, 2017. No petition for reconsideration was filed.

On appeal, Whitaker argues Ellison is not entitled to any benefits based upon the carpool exemption found in KRS 342.650(7). Whitaker also argues the claim is barred by the "coming and going" rule. Because we find the ALJ, as a matter of law, did not err in determining Ellison was injured in the course and scope of his employment, and his claim is not barred, we affirm.

Ellison filed a Form 101 on November 20, 2017. He alleged he sustained multiple injuries in an MVA occurring on August 4, 2017, as he was a passenger in a pickup truck returning from a jobsite to the company shop. He allegedly injured his neck, back, head, nose, jaw, face, elbow, teeth, and broke his glasses. In the Form 104, Ellison noted he began working for Whitaker in 2014. The Mercer County Sheriff's Department accident report indicates the accident occurred approximately fourteen miles north of Harrodsburg, Kentucky.

There is little dispute regarding the facts of the case. Whitaker is a small concrete company with a shop located next to the owner's home in Smithfield, Kentucky. Whitaker's employees met at the shop each morning to obtain the tools necessary for jobs to be worked on that day, and then embarked to the worksites. The employees were paid from the time they arrived at the shop until the job was finished at the end of the day. Dee Whitaker ("Dee") testified that employees were not paid for the time spent traveling from the worksite back to the shop; however, they were paid for the time spent traveling to the worksite. Ellison agreed with Dee's testimony regarding the compensable hours.

On August 4, 2017, Ellison arrived at the shop in Smithfield. Employees were transported to the jobsite in two trucks, one of which was

apparently owned by Whitaker's son, although it was used on the job. On the way to Danville, the parties stopped to fuel the trucks and get something to eat. They then finished the trip to Danville, and worked until it started raining. When it was apparent the rain would not stop, the employees started back toward Smithfield.

As noted in the accident report, Ellison was the passenger in one of the trucks returning to Smithfield, when at 11:53 a.m., approximately fourteen miles north of Harrodsburg, Kentucky, the truck left the road and overturned. Ellison was thrown from the vehicle, sustaining multiple injuries. He was taken to the University of Kentucky Medical Center via helicopter.

Whitaker argued Ellison's injuries were not work-related pursuant to KRS 342.650(7) since he was carpooling at the time of the accident. The claim was bifurcated for a determination regarding whether the accident was work-related. On August 7, 2018, the ALJ issued an Interlocutory Opinion and Order finding Ellison fell within the traveling employee exception to the "coming and going" rule. He determined Ellison sustained injuries in the course and scope of his employment. Whitaker appealed from that decision. This Board dismissed the appeal on September 12, 2018, since Whitaker had appealed from an interlocutory decision. We will not review the medical evidence since it is not relevant to the issues raised on appeal.

On October 18, 2019, Whitaker filed a Form 112 medical dispute challenging treatment from Dr. Danan L. Hall, D.C., and the University of Louisville Oral Surgery and Hospital Dentistry. The ALJ sustained Whitaker's motion to join those two entities as parties.

A Benefit Review Conference was held on October 10, 2019. The issues preserved for determination included whether Ellison retains the capacity to return to the type of work performed at the time of the injury, all issues decided on bifurcation, extent and duration of disability (including multipliers), compliance with the 5th Edition of the AMA Guides, TTD, and unpaid or contested medical benefits. We note Ellison filed multiple medical bills or bill summaries from various medical providers.

The ALJ rendered the Opinion, Award, and Order on December 9, 2019. He referenced the interlocutory decision where he determined Ellison was injured in the course and scope of his work with Whitaker. The ALJ provided an outline of the "coming and going" rule, analyzed the holding in Receveur Construction Company v. Rogers, 958 S.W.2d 18 (Ky. 1997), and the traveling employee exception noted in Black v. Tichenor, 396 S.W.2d 794 (Ky. 1965).

Relying upon Dr. Thomas Loeb's opinion, the ALJ determined Ellison has a 0% impairment rating for his cervical complaints. Relying upon Dr. Morgan Budde's opinion, he determined Ellison has a 5% impairment rating for his thoracic injury. The ALJ determined the three multiplier contained in KRS 342.730(1)(c)(1) is not applicable since no restrictions were placed on Ellison's activities. The ALJ also noted Ellison had returned to work at a higher pay rate. He found Ellison may be entitled to the application of the two multiplier contained in KRS 342.730(1)(c)2 if he ever ceases earning the same or higher rate of pay that he earned at the time of the accident.

The ALJ specifically found as follows:

The "going and coming" rule was defined by the Kentucky Supreme Court in *Receveur Construction, Co. v. Rogers*, 958 S.W.2d 18, 20 (Ky. 1997), 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 also *Haney v. Butler*, 990 S.W.2d 611 (Ky. 1999); *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 rule generally applies to travel to and from a fixed-situs 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 of the rationales behind the rule is that going to and coming from work is the product of the employee's own decision on where to live, which is a matter ordinarily of no interest to the employer. *Collins v. Kelley*, No. 2002-CA-002472-MR, 2004 WL 1231633 (Ky. App. 2004).

However, there are several exceptions to the "going and coming" rule, including the traveling employee doctrine and the service to the employer exception.

The traveling employee doctrine provides:

> When 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). Professor Larson elaborates, "[e]mployees 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).

The traveling employee doctrine is well established in Kentucky jurisprudence. In *Black v. Tichenor*, 396 S.W.2d 794, 796-97 (Ky. 1965), the Supreme Court 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)].
>
> Although traffic perils are ones to which all travelers are exposed, the particular exposure of Tichenor in the case at bar was caused by the requirements of his employment and was implicit in the understanding his employer had with him at the time he was hired. *Palmer v. Main*, 209 Ky. 226, 272 S.W. 736 [(1925)]; *Hinkle v. Allen Codell Company*, 298 Ky. 102, 182 S.W.2d 20 [(1944)]. In the recent case of *Corken v. Corken Steel Products, Inc.*

> (1964), Ky., 385 S.W.2d 949, where a traveling salesman was killed on a public street by a demented stranger, we approved an award of compensation, and said:
>
> > We accept the view that causal connection is sufficient if the exposure results from the employment. Corken's employment was the reason for his presence at what turned out to be a place of danger, and except for his presence there he would not have been killed.

Thus, the traveling employee exception to the "going and coming" rule is grounded in the "positional risk" doctrine, articulated by the Supreme Court in *Corken v. Corken Steel Products, Inc.*, 385 S.W.2d 949 (Ky. 1964).

Further, as cited by the Plaintiff, in *Gaines Gentry Thoroughbreds/Fayette Farms v. Mandujano*, 366 S.W.3d 456, 463-464 (Ky. 2012), the Kentucky Supreme Court held as follows:

> Kentucky applies the traveling employee doctrine in instances where a worker's employment requires travel. Grounded in the position risk doctrine, the traveling employee doctrine considers an injury that occurs while employee is in travel status to be work-related unless the worker was engaged in a significant departure from the purpose of the trip. The ALJ did not err by concluding that the traveling employee and position risk doctrines permitted compensation in this case.
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> The claimant's accident did not occur while he was working for Eaton or Paramount but while he was traveling from Saratoga back to Lexington. As found by the ALJ, the parties contemplated that he would work at the sales and return to his duties at the farm when the sales ended. The accident in which he was injured occurred during the "necessary and inevitable" act of

> completing the journey he undertook for Gaines Gentry. In other words, travel necessitated by the claimant's employer placed him in what turned out to be a place of danger and he was injured as a consequence. (Emphasis added).

The ALJ finds that, given the totality of circumstances, the Plaintiff in the instant case was a traveling employee and falls well within the "traveling employee" exception to the "coming and going" rule. The Plaintiff's work required travel away from the employer's premises. In fact, all of the work the Plaintiff performed, with the exception of loading tools and equipment into the truck, occurred away from the employer's premises on various jobsites, some local and some remote. As such, it was implicit in the understanding between the Plaintiff and the Defendant that travel would be required. Further, the travel necessitated by the Plaintiff's work for the Defendant ultimately placed him in what turned out to be a place of danger, and the Plaintiff's injury was a consequence. The fact that the injury occurred on the way [home] when the Plaintiff was not being paid does not change this conclusion. The return trip was a necessary and inevitable act of his getting home from the out-of-town jobsite. Lastly, the fact that the employees, including the Plaintiff, intended to stop by Bojangles on their way home did not constitute a distinct departure. The Bojangles was on their route home and they had yet to arrive. Accordingly, the ALJ finds that the "traveling employee" exception to the "going and coming" rule is applicable, and that the Plaintiff's injury occurred in the course and scope of his employment.

The first exception above, standing alone, provides a sufficient basis to determine that the Plaintiff's injury occurred within the course and scope of his employment. However, the Plaintiff also cites a second exception that the ALJ also finds applicable. Specifically, the Kentucky Supreme Court has also recognized the "service to the employer" exception to the "going and coming" rule in *Receveur Construction, Co. v. Rogers*, 958 S.W.2d 18, 20 (Ky. 1997). *Receveur* is somewhat different than the instant claim in that the travel in *Receveur* involved a situation where the employer's construction company was located in Louisville, the employee's residence was in

Campbellsville, the employee traveled in a company issued vehicle to various remote jobsites around the region, and the accident occurred between his company office and his home. However, the same general principles are applicable. The Kentucky Supreme Court in *Receveur* acknowledged that generally injuries incurred while traveling to and from work are not deemed to arise out of and in the course of the employment. However, the Court held the accident to be compensable under the "service to the employer" exception. *Id*. at 20. (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); and *Palmer v. Main*, 209 Ky. 226, 272 S.W.2d 736 (Ky. 1925)). The Court in its reasoning did not focus on the particular trip during which the accident occurred, but rather the benefit the employer received generally from Rogers' use of the company vehicle.

In this case, the very nature of Plaintiff's employment encompassed traveling to sometimes remote non-permanent jobsites in order to pour concrete. The Plaintiff's travel from the employer's premises to the various jobsites was clearly a service to the employer and in furtherance of the Defendant's business interests. The employees would meet at the employer's premise, where they would sometimes load the trucks with tools and equipment at the central office before traveling with the equipment to the jobsite. The Plaintiff credibly testified that sometimes, while at the shop, the employees discussed what tasks they were going to perform that day, and how they were going to do it. Mr. Whitaker, the owner of the company, testified that start times for jobs often varied and were dependent on when he could get the concrete delivered to the jobsite. He initially testified that the employees were required to meet at the shop and drive together, unless one of them was late. When asked if the employees were required to show up at the shop on a local job, Mr. Whitaker clarified that they could drive themselves to the jobsite if they desired. Nevertheless, it is clear that the employees routinely rode together in two or three trucks, sometimes carrying equipment. Reading the testimony as a whole, the travel was clearly a service to the Defendant. By traveling together, the Defendant was able to ensure that its employees would get to the jobsite on time and as a

group. The timeliness of the employee's arrival was essential because their arrival was coordinated with the arrival of the concrete. Further, the type of work performed, specifically the pouring of concrete, appears to more effectively performed when all workers arrive at the same time – as opposed to filtering in one by one. The Defendant also apparently encouraged the arrangement, provided at least some of the trucks, as well as usually providing the gas. Accordingly, the ALJ finds the "service to the employer" exception to the "coming and going" rule also applies, and that the Plaintiff's injury occurred in the course and scope of his employment.

The Defendant cites *Brown v. Owsley*, 564 S.W.2d 843 (Ky. App. 1978) to support their position that the "benefit to employer" exception does not apply, and specifically quotes the following passage:

> However, after a review of the facts, we believe that those cases and the theories propound are inapplicable in this case. Since those cases, the court has decided *Spurgeon v. Blue Diamond Coal* Co., 469 S.W. 2d 550 (Ky. 1971); *Lycoming Shoe Co. v. Woods*, 472 S.W. 2d 257 (Ky. 1971); and *Baskin v. Community Towel Service*, 466 S.W. 2d 456 (1971); which, as in the instant case, involved employees being injured either while traveling for their employer or while traveling from home to the place of their employment. In these cases, the court has held that the critical issue is whether the employee was injured while performing some service for his employer. The court held that travel from home to the place of employment is not performing some service for the employer, and therefore is not arising out of and in the course of employment. *Under the present fact situation, there is no evidence that the employees were performing any service for their employer.*
>
> Therefore, we are compelled to hold in the present case that where the appellants traveled from home to a central meeting

> point each morning and then to a fixed place of employment, although it may change from day to day or week to week, and where they worked a fixed schedule from 8:00 a. m. until 4:30 p.m., that injuries or death incurred while in transit from home to work do not come within the purview of the Workmen's Compensation Act and it cannot be said that their injuries and death arose out of or in the course of their employment.
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> The *Brown* case is distinguishable. The Court in *Brown* denied benefits because there was no evidence that the employees were performing any service for their employer. However, as noted above, the employees in the instant case were performing a service for their employer. As such, the *Brown* case differs from the instant case and is not persuasive.

...

KRS 342.650(7) states,

The following employees are exempt from the coverage of this chapter:

> 7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his or her place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported **from their residences to their places of employment**;

(Emphasis added).

A plain reading of the statue shows that the statute does not encompass the activity in the instant claim. The statute involves a carpool wherein employees are "transported from their residence to their places of employment." It is undisputed that the Plaintiff in this case drove himself from his residence to his place of

employment. The motor vehicle accident occurred while being transported from a jobsite back to his place of employment. Accordingly, KRS 342.650(7) is not implicated.

The Defendant again cites *Brown v. Owsley*, 564 S.W.2d 843 (Ky. App. 1978) in support of its argument that recovery is barred by the carpool exception, however, the *Brown* case itself does not even mention KRS 342.650(7) despite the fact that at least one of the Plaintiff's was actually traveling between his residence and the jobsite. The Defendant also cites an unpublished Kentucky Court of Appeals case, *Rardin v. Flor-Shin Inc.*, 1996-CA-002702 in support of its position that KRS 342.605(7) is applicable. Note that *Rardin* was a civil wrongful death case where the Circuit Court dismissed the claim because they did not have subject matter jurisdiction because of the exclusive remedy provision of Kentucky's Workers' Compensation Act. The Court in *Rardin* ultimately found that Rardin's injury did occur in the course and scope of his employment, that the carpool exception in KRS 342.650(7) was not applicable, and that workers' compensation was the exclusive remedy. In doing so, the Court found that Rardin's employment was the reason for his presence at what turned out to be a place of danger, and except for his presence there he would not have been killed. The claim was dismissed in circuit court on summary judgement, and there was a dispute as to whether Rardin was to be transported to his place of employment or to his residence. In addressing this portion of the statute, the court stated that they did not believe that Rardin was being dropped off at his residence, and even if he was, the exception would not be invoked because of the use of the company van and the Defendant's compensation of the driver. The *Rardin* case does not specifically address the applicability of KRS 342.650(7) in a situation that involves transportation from the place of employment to a different job site – most likely because the answer is evident based on the plain reading of the statute. In sum, the case in no way changes the fact that the Plaintiff in the instant case was not being transported from his residence to his place of employment. As such, the ALJ finds that the claim is not barred by the carpool exception

As noted above, no petition for reconsideration was filed since the facts are not at issue on appeal. Pursuant to KRS 342.285, the absence of a petition for reconsideration means the ALJ's decision "shall be conclusive and binding as to all questions of fact," as long as substantial evidence exists in the record supporting the ALJ's conclusion. As the Supreme Court of Kentucky instructed in Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985), if the ALJ's conclusions are supported by substantial evidence in the record, even a "failure to make findings of an essential fact" cannot be reversed and remanded to the ALJ unless that failure was first brought to his attention. Id. at 338.

On appeal, Whitaker argues the ALJ erred in finding Ellison is entitled to any benefits based upon the carpool exemption found in KRS 342.650(7). Whitaker also argues the claim is barred by the "coming and going" rule.

The "coming and going" rule generally states 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. Such hazards ordinarily encountered in such journeys are not deemed incident to the employer's business. Kaycee Coal Co. v. Short, 450 S.W.2d 262 (Ky. 1970).

There are several exceptions to this general rule, including the "service to the employer" exception as set forth in Receveur Construction Co. v. Rogers, supra, and Bailey Port v. Kern, 187 S.W.3d 329 (Ky. App. 2006). In Receveur, the employer's construction company was located in Louisville and the employee's residence was in Campbellsville. The employee worked at remote job sites around

the region. Shortly before his fatal MVA, Rogers was promoted to project superintendent and was issued a company vehicle. The truck was equipped with a CB radio, allowing him to communicate with Receveur's office during the day. The truck was used as a means of transportation during the course of the workday, and between Roger's home and job site so he would not first be required to go to the office in Louisville. Rogers was provided a credit card to cover the cost of fuel for the vehicle. He was not paid for travel time between his home and work, although he was paid for travel time between the central office and remote job sites. On the day of the accident, Rogers worked at a remote job site in Indiana. He returned in the company truck to the office in Louisville where he unloaded rubbish. Rogers then left for home in the company truck when the accident occurred.

The Kentucky Supreme Court acknowledged that generally injuries incurred while traveling to and from work are not deemed to arise out of and in the course of the employment. Receveur, 958 S.W.2d at 20. However, it held the accident was 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); and Palmer v. Main, 209 Ky. 226, 272 S.W.2d 736 (Ky. 1925)). The Court in its reasoning did not focus on the particular trip during which the accident occurred, but rather the benefit the employer received generally from Rogers' use of the company vehicle. The 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.
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> Id. at 21

The Kentucky Supreme Court acknowledged the majority of jurisdictions have held injury or death occurring while an employee is commuting to work in a company vehicle is compensable as a work-related activity. However, the Court refused to go that far; instead, it applied the "some benefit" test.

The Kentucky Court of Appeals applied the "some benefit" doctrine expressed in Receveur supra, in determining Kern, supra. Kern was supplied a company vehicle, and sustained injuries when he was involved in a MVA while driving home from work. Kern kept tools in the vehicle and was on call all times of the day and sometimes at night. The Court discussed the Receveur holding in connection with the evidence before it, finding Kern was given the use of the vehicle for the company's benefit and not necessarily for personal errands.

In Fortney v. Airtran Airways, Inc., 319 S.W.3d 325 (Ky. 2010), the Kentucky Supreme Court held the rule excluding injuries occurring off the employer's premises, during travel between work and home, does not apply if the travel is part of the service for which the worker is employed, or otherwise benefits the employer. Fortney, a pilot for the employer, was a resident of Lexington, Kentucky, although his work was based in Atlanta, Georgia. He flew between Lexington and Atlanta, and was not reimbursed for his commuting expenses. However, the employer provided free or reduced fare travel to its employees and their families. Fortney was killed when the plane in which he was a passenger crashed on takeoff in Lexington enroute to Atlanta. Ultimately, the Court remanded the claim to the ALJ for consideration of whether the free or reduced fare arrangement induced the claimant to accept or continue employment with Airtran. Id. at 330. There was no allegation of substantial deviation on Fortney's part.

In Farris v. Huston Barger Masonry, Inc., 780 S.W.2d 611 (Ky. 1989), a worker was riding as a passenger in a pickup truck owned and operated by his brother-in-law who was one of the foremen for the employer. The worker, as well as the brother-in-law and others, were usually engaged in a carpool arrangement to go to various job sites, a fact well known to the employer. A traffic accident occurred while they were on their way to pick up company checks at an employee's home. The court in Farris ruled that the injuries sustained were compensable since the employer had knowledge, supported the practice, and benefited from its employees' carpooling. Likewise, since the coworkers were running an errand, thus providing a service to the employer during the time in question, the injuries were work-related.

In State Highway Commission v. Saylor, 252 Ky. 743, 68 S.W.2d 26 (1933), the Court noted the employer was not obligated to furnish employee transportation, and the employee's pay started only when he began his work at the actual job site. However, the employer's practice of conveying its employees to the job site was clearly in its interest by enabling employees to begin work sooner with no impact from the distances between the job sites and their residences. Therefore, there was an implied contract the employer would transport the worker to his residence, which was part of the employment contract. *See* Olsten-Kimberly Quality Care v. Parr, 965 S.W.2d 155 (Ky. 1998). *See also* Larson's Workman's Compensation Law, Desk Edition, Section 17.00, where it is noted that when the journey to and from work is made in the employer's conveyance, the journey is in the course of employment, the reason being that the risk of the employment continues throughout the journey.

We also note the holding in Louisville v. Jefferson County Air Bd. v. Riddle, 190 S.W.2d 1009 (Ky. App. 1945). The Court held when an injury occurs while performing a service for the employer in the line of duty, it is compensable. It additionally noted, "[T]he words 'arise out' refers to the cause of the accident, while 'in the course of' relate to the time, place and circumstances of the accident." Abbott Laboratories v. Smith, 205 S.W.3d 249 (Ky. App. 2006); Clark County Bd. Of Educ. v. Jacobs, 278 S.W.3d 140 (Ky. 2009). Whether an action by an employee was or was not a benefit or service to the employer is a finding of fact and will not be disturbed on appeal if supported by evidence of probative value. Howard D. Sturgill & Sons v. Fairchild, 647 S.W.2d 796 (Ky. 1982).

We additionally agree with the ALJ's analysis of Brown v. Owsley, 564 S.W.2d 843 (Ky. App. 1978), and find Whitaker's reliance on that case is misplaced. We also determine the ALJ provided the correct analysis in finding this claim is similar to the facts in Gaines Gentry Thoroughbreds/Fayette Farms v. Mandujano, 366 S.W.3d 456, 463-464 (Ky. 2012). There, Mandujano traveled to a Saratoga racetrack at his employer's request. At the conclusion of the Saratoga business, Mandujano returned to Kentucky. He was injured on his return trip to Kentucky. The employer argued that Mandujano spent additional time in New York after the business was concluded, extinguishing its responsibility for the return trip. The Kentucky Supreme Court disagreed and found Mandujano's injuries compensable. We find Ellison's situation is no different from Mandujano's.

The facts presented are simple. Ellison arrived for work at Whitaker's shop in Smithfield, and was transported via company owned or directed conveyance to the jobsite in Danville. He performed his work duties, and in the process of being transported back to the shop where he began his workday, he was injured. This is not a situation where the employees met at a specific location, "or transported from his residence" in a carpool to a worksite as contemplated by KRS 342.650(7). Notably, Dee testified Whitaker derived "some benefit" from the employees meeting at the shop before embarking to the worksite, including the loading of equipment for jobs to be performed that day. Therefore, we find the ALJ did not err in determining Ellison's injuries are compensable.

For the foregoing reasons, the Interlocutory Opinion and Order rendered August 7, 2018, and the December 9, 2019 Opinion, Award, and Order

rendered by Hon. Richard E. Neal, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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