

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 8, 2019

CLAIM NO. 201859752

MATTHEW OWENS

PETITIONER

VS.

APPEAL FROM HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE

INSPERITY SERVICES and
HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Matthew Owens (“Owens”) appeals from the June 26, 2019 Opinion and Order, and the July 25, 2019 Order denying his petition for reconsideration rendered by Hon. W. Greg Harvey, Administrative Law Judge (“ALJ”). The ALJ determined Owens failed to prove he was within the course and scope of his employment when he slipped and fell in his driveway on January 18, 2018. On appeal, Owens argues the circumstances of his injury fall within the

service to Insperity Services (“Insperity”), and the traveling employee exceptions to the going and coming rule. Because the ALJ performed the appropriate analysis, substantial evidence supports his decision, and a contrary result is not compelled, we affirm.

Owens filed a Form 101 alleging he injured his low back on January 18, 2018 while working for Insperity in the following manner: “Drove home from job site, exited company vehicle, slipped on ice. Was paid for drive time so employer stated as (sic) he had not made it into the house yet he was still on the clock.” The claim was bifurcated on the issues of whether Owens was within the course and scope of his employment at the time of the incident, and whether he provided due and timely notice of his injury. We will not summarize the medical evidence since it has no bearing on whether Owens was within the course and scope of his employment at the time of his accident.

Owens testified by deposition on February 15, 2019, and at the hearing held April 29, 2019. At the time of the January 18, 2018 incident, Owens resided in Mount Vernon, Kentucky. Owens previously worked at Source HOV from 2012 to 2014. He began working for Qwinstar¹ in August or September 2015. Owens testified Qwinstar is headquartered in Saint Paul, Minnesota, and does not have a physical office in Kentucky. Owens’ job with Qwinstar entailed maintaining, programming, and repairing large scanners.

¹ Although the Form 101 identifies the Employer as Insperity, the parties referred to his Employer at the time of the accident as Qwinstar.

At his deposition, Owens initially testified the scanners he serviced were located throughout Kentucky in Louisville, Mount Sterling, Mount Vernon, and London. Owens testified that when a customer called in for a scanner service, a work order automatically generated and was then emailed to him. Owens then had two hours to respond to the emailed work order. Owens was additionally required to perform preventative maintenance (“PM”) on all the scanners on a monthly basis. Owens traveled from his home directly to job assignments that were dispatched to him. Owens was paid a salary on a bimonthly basis. He typically worked forty hours per week with little opportunity for overtime. Owens testified Qwinstar did not provide a company vehicle, cell phone or credit card. Owens testified Qwinstar reimbursed him for mileage and gas expenses, and he received a cell phone allowance. Owens testified he reported his mileage, drive time and hours to Qwinstar. His direct supervisor, Jim Poulos (“Poulos”), was located in Chicago, Illinois. Owens provided the following relevant testimony about his injury and job requirements on or about January 18, 2018:

A: I went to work like normal. At that time I was on – I was doing a job just right up the road. Went home, gathered my things, stepped out the door to get down to the house, and went down the driveway on my back like a sled.

Q: Okay . . . Were you living in Somerset at that time?

A: No, at that time I was living in Mount Vernon.

Q: And where was the job you were on that day?

A: Mount Vernon.

Q: And were you on that same jobsite all day?

A: Yes ma'am.

Q: And was that just a PM job?

A: At that time I was put on that site for - I stayed at that site for a while.

Q: Oh, okay. So, that was actually like a jobsite you were going to daily?

A: Daily, yes.

Q: How long had you been on that job?

A: For over a year.

Q: How many scanners did they have?

A: Fourteen.

Q: Okay.

A: They started with seven. I started them with seven.

Q: So, they just – those – you just were essentially there for pretty much constant maintenance?

A: Yes, ma'am.

Q: Make sure the machines stay up and running?

A: Yes, ma'am.

Q: Alright. So, you drove home, to your home, from the job.

A: Yes.

Q: Okay. And then parked in your driveway?

A: Yes.

Q: Was it raining, snowing, anything like that?

A: It had snowed the night before. Might have been two nights before.

Q: Do you know about what time it was when you got home?

A: . . . I'd say about a quarter till six.

Q: Alright. And, so, you said you just stepped out of your car?

A: Yes.

Q: And then what happened?

A: I slipped, fell, went down the driveway.

. . . .

Q: Okay. Did you have anything else to do for work that night or were you done for the day?

A: I was done for the day.

He identified Source HOV as the business where he had reported to daily for the past year. Owens further testified he was holding his cellphone in his hand when he slipped in his driveway, but was not using it at the time. Owens testified that he had left his tools onsite at Source HOV since he was returning there the following day. Owens testified he assumed he slipped on ice in his driveway and injured his low back. Owens believes his injury is work-related because Randy Santos ("Santos") related to him he was a covered employee from the time he left his door until the time he reached his front door. Santos held a similar position as Owens, but was responsible for the Cincinnati region.

Owens provided somewhat similar testimony at the hearing. Owens testified he was a technician of large scanners for Qwinstar and had worked for five different accounts located throughout Kentucky. He did not report to a physical

location in Kentucky. Rather, after receiving an email of a work order, he left directly from his home to job sites using his personal vehicle. Owens testified he kept his tools in his car. Owens testified he was paid a salary, but was also compensated for overtime. Qwinstar required Owens to provide a time log. Owens believed he was paid from the time he left his home until the time he returned home. Owens testified he injured his low back exiting his vehicle at home on January 18, 2018, and notified Poulos of the incident shortly thereafter.

On cross-examination, Owens acknowledged he had been placed at Source HOV in Mount Vernon on a long-term basis, but he “was still responsible to be dispatched to the other locations.” If he was not dispatched to another location, he reported to Source HOV in Mount Vernon, seven miles away from his home. Unlike his deposition testimony, Owens stated he been assigned to the Source HOV site in Mount Vernon for approximately four months. He then acknowledged it might have been a year. Owens agreed he reported to Source HOV on a daily basis unless he was dispatched to a different location. He also clarified that although he typically left his tools in his car, he also left them on-site if he knew he would be returning the next day. Owens testified he left his tools on-site at Source HOV on January 18, 2018. Owens stated he was paid mileage, in addition to his salary. Owens also clarified he fell at the top of his driveway getting out of his car. He also acknowledged he was not pursuing any work-related activity as he exited the car.

Poulos also testified by deposition on May 1, 2019. At the time of Owens’ injury, Poulos worked for Qwinstar as a project manager and was his direct supervisor. Poulos stated technicians like Owens were paid a salary, but also

received overtime pay. Poulos testified Owens was considered an on-site technician, meaning he was dedicated to one location, in this instance Source HOV, on a full-time basis. Poulos stated it was possible Owens could be sent on other service calls while in an on-site placement, after hours, or on the weekends. Owens was considered an on-call technician earlier in his employment with Qwinstar.

Poulos explained technicians were generally paid mileage and drive time for travel from site location to site location, but not for travel from home to a location or returning home, unless it was long distance. Poulos testified Owens should not have been paid mileage or drive time to and from work. However, Poulos acknowledged he did not approve or review Owens' expense reports and could not verify whether in fact he was paid for his travel to and from work. At the time of the work incident, the main office in Saint Paul, Minnesota handled the technicians' expense reports. Subsequent to the work event, Qwinstar underwent a reorganization and now Poulos reviews the technicians' expense reports.

Poulos reiterated Qwinstar workers are not considered employees until they arrive to a job site and at the time of the incident, Owens was not considered a traveling employee since he was permanently assigned a specific site in Mount Vernon, Kentucky. Poulos denied ever advising Owens, or any other employee, he was paid from the time he left his house until he returned home to his front door.

Insperty filed Owens' pre-injury wage records indicating Owens was paid approximately the same amount bi-monthly, and he worked a total of three hours overtime from January 2017 to January 2018. No records or documentation

regarding expenses or reimbursement for mileage and/or drive time were filed into the record.

In the June 26, 2019 opinion, the ALJ found Owens was not within the course and scope of his employment at the time of his slip and fall. The ALJ dismissed Owens' claim, finding as follows:

The first question before the ALJ in this claim is whether or not Owens was injured in the course and scope of employment. Owens had gone to work, finished his shift and returned home. There is no indication he was still providing any benefit to the Defendant or intending to do so as he parked and began to exit the vehicle. This is not a situation where Owens was headed inside to continue working. Owens worked eight hours a day and no overtime. In short, the ALJ finds that Owens was not working at the time of his fall. As noted by the Defendant in its' brief, the general rule is that injuries sustained by workers when they are going to or returning from the place they regularly perform their duties are not compensable because they do not "arise out of" nor are they in "the course of employment." *See Receveur Constr. Co./Realm v. Rogers*, 958 S.W.2d 18 (Ky. 1997).

Exceptions to this general rule do exist and, in the case of a traveling employee, there may be a causal connection between the travel and the injury where the employer subjects the injured worker to the risk that caused the injury. Where the risk that causes injury arises out of the employment then the claim may be compensable. Here, the risk that caused Owens's injury was not driving or travelling. It was ice in his own driveway. Plaintiff's driveway was not a part of the Defendant's operating premises, nor the operating premises of the customer where Plaintiff had worked every day for over a year.

The risk that caused Plaintiff's fall, by his own report, was ice that had melted and froze again after a snowfall. Nothing about the Defendant's business created Plaintiff's risk of slipping and falling on ice in his own driveway. 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, supra; *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-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 rationale of 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, 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).

Owens does not meet any of the exceptions to the going and coming rule, including the operating premises exception or the service to the employer exception. Owens testified he had been stationed at the Kentucky HOB[sic] site for over a year prior to his injury. As pointed out by his supervisor, Owens was no longer working as an on-call technician where he received work assignments at his home via email and then travelled from his home to various customer sites to perform work. The ALJ finds Owens was not a traveling employee at the time of this incident. Even if it were assumed, for the sake of argument, that Owens was a travelling employee, in this instance he had parked his car and began to exit the vehicle with no intent to do any further work. In other words, his workday finished upon arrival. His slip and fall on the ice in the driveway occurred after he completed his trip and all service to the employer had ceased.

The ALJ recognizes Plaintiff’s testimony that he believed he was paid from the time he left home until the time he returned home. Here, however, Plaintiff’s employee status at the time of the injury was not that of a travelling employee. Plaintiff did not prove that he was

paid mileage for driving to and from the site he regularly worked at in Mount Vernon. In addition, the ALJ has found Owens was no longer providing any service to the employer at the time he slipped and fell. As argued by the Defendant in its brief, here there was no more going or coming when the injury occurred.

Based on the foregoing, the ALJ finds Owens has failed to meet his burden of proving he was within the course and scope of his employment when he slipped and fell[sic] in his driveway and his claim must be dismissed.

Owens filed a petition for reconsideration essentially making the same arguments he now raises on appeal. He requested additional findings supporting the ALJ's determination that Owens had been working as an on-site technician, permanently stationed at one location in Mount Vernon, for over a year at the time of his injury. The ALJ denied Owens' petition, making the following additional findings and analysis:

. . . . First, Plaintiff first takes issue with the statement on page 3 of the Opinion that Jim Poulos never told him that he was a covered employee from the time he left his home until he returned to his front door. Plaintiff points out Poulos was not with the company when he was hired. The ALJ did not rely upon Mr. Poulos's testimony about what he told Owens. Instead, the ALJ focused the basis for the decision on what Owens was actually doing in the time leading up to the alleged injury. During that most recent employment Owens was working from a static place of employment and was not travelling.

Second, Plaintiff argues he was paid for mileage and that the Supreme Court of Kentucky in Fortney v. Airtran Airways, Inc., 319 S.W. 3d 325, 328 (Ky. 2010) held that the payment of mileage was a factor in determining whether an injured worker met an exception to the coming and going rule. Plaintiff reiterates that he received his work via email and factored in drive time in scheduling his work. That may

have been true at some point in his employment but it had not been the case for an extended period prior to the alleged injury. Again, the ALJ focused the analysis on the period of employment that preceded the date of the alleged injury. During that time Owens was placed at a static location and was not making service calls.

Third, the Plaintiff reargues his position that he was a travelling employee and therefore meets an exception to the coming and going rule. The ALJ fully addressed that argument in the Opinion and will not revisit it now.

Fourth, the Plaintiff seeks additional findings as to how the ALJ reached the conclusion that Owens had “been working as an on-site technician, permanently stationed at one location in Mount Vernon over a year at the time of his injury.” He maintains he received daily work orders via email and did not know where he was working every day and was not “permanently stationed” at one location. The Defendant accurately points out that the ALJ quoted Owens’ testimony in making that determination. On page 2 of the Opinion the ALJ recounted Owens’ deposition testimony that at the time of the injury he had been on the site in Mount Vernon “for a while” and had been there “daily....for over a year.”

On appeal, Owens argues the ALJ’s determination is contrary to the evidence, is not in conformity with the Act, amounts to an abuse of discretion, and was arbitrary and capricious. Owens argues the circumstances of his injury fall with the service to Insperity, and relies upon Fortney v. Airtran Airways, Inc. 319 S.W.3d 325 (Ky. 2010). He also argues the traveling employee exception applies.

As the claimant in a workers’ compensation proceeding, Owens had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Owens was unsuccessful in his burden, 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 sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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 which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. 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, supra.

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-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 rationale of 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, 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 service to the employer exception.

In Receveur Construction Company/Realm, Inc. v. Rogers, 958 S.W.2d 18 (Ky. 1997), the Court acknowledged the general rule 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.” 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 motor vehicle 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 significance in the fact that Kern stored his tools in the company vehicle and the employer allowed him to travel directly to a job site instead of stopping at the place of work to pick up his tools.

While we do not cite our own decisions as authority, we do reference them for guidance and consistency. In Erwin Vaughan v. Jack Marshall Foods, Claim No. 2015-89906, (rendered May 6, 2016), the claimant was responsible for the daily operation of four restaurants in a regional area. He was mostly on the road visiting the stores, and maintained an office in his home. On the day of the accident, Vaughan had been at a store most of the day. He then drove the company car back home, with the intention of continuing to work upon reaching his office. When he arrived at his home, he parked the car and gathered his computer and briefcase to head inside. Vaughan stepped on ice in his driveway and fell, injuring his leg. The

ALJ ultimately determined that walking from the car to his home door was not an activity of “service to his employer.” Rather, the walk was a common commuter type activity during which he was exposed to hazards ordinarily encountered by thousands of workers every winter. The Board affirmed this opinion, which was not appealed.

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 or she deems most important and engage in that weighing process. 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).

Substantial evidence supports the ALJ’s determination Owens was no longer providing a benefit or service to his employer at the time he slipped and fell, and a contrary result is not compelled. As noted by the ALJ, Owens had completed his work at Source HOV and returned home. Owens acknowledged he drove his personal vehicle, and parked it at the top of his driveway to enter his home. Like the claimant in Vaughan, Owens slipped on ice in his personal driveway after exiting the car. Owens additionally had no tools in his personal car since he had left them at Source HOV. Unlike the claimant in Vaughan, Owens testified he had no intention of continuing any work-related activity inside his home and was done for the day.

Owens relies on Fortney v. Airtran Airways, Inc., *supra*, and the fact he testified he was compensated for his drive time and mileage. In Fortney v.

Airtran Airways, Inc., *supra*, 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, resided in Lexington, Kentucky while his work was based in Atlanta, Georgia. He flew between Lexington and Atlanta, and was not reimbursed for his commuting-related 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 in route to Atlanta. The Court noted factors to be considered under the service/benefit to the employer exception is an employer service or benefit, whether the injured worker is paid for travel time, and whether he or she is paid for travel expenses. *Id.* at 329. Ultimately, the Court remanded the claim to the ALJ since he failed to consider whether the free or reduced fare arrangement induced the claimant to accept or continue employment with Airtran. *Id.* at 330.

Here, the ALJ properly weighed the factor of reimbursement for mileage and travel time. The ALJ determined Owens did not prove he was paid mileage for driving to and from Source HOV in Mount Vernon, a finding we will not disturb on appeal. Although Owens testified he was reimbursed for mileage to and from Source HOV, Poulos testified he should not have been pursuant to the Employer's pay policy. There are no records or documentation in the record corroborating Owens' assertion. In light of the conflicting testimony by Poulos and lack of documentation demonstrating actual reimbursement, the ALJ was free to

reject Owens' testimony. We additionally note the payment for mileage or travel does not automatically mandate a finding the exception is applicable. This is merely a factor to be considered, which the ALJ did in this instance.

Owens also argues he was a traveling employee at the time of the slip and fall, and therefore the ALJ erred in failing to find applicable the traveling employee exception to the going and coming rule. 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. (Emphasis added)

William S. Haynes, Kentucky Jurisprudence, Workers' Compensation, § 10-3 (revised 1990). As noted by the ALJ, 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). The traveling employee doctrine is well established in Kentucky jurisprudence. 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.

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 first determined Owens was not a traveling employee at the time of the January 18, 2018 accident, relying primarily upon his deposition testimony. There, Owens testified he had been assigned to Source HOV for over a year prior to the accident, and reported to the site on a daily basis. Poulos additionally testified that Owens was considered an on-site technician at the time of the accident, meaning he was dedicated to one location on a full-time basis. Owens' and Poulos' deposition testimony constitute substantial evidence supporting the ALJ's determination he was not a traveling employee at the time of the accident, and a contrary result is not compelled. Although Owens is able to point to his hearing testimony indicating he may have traveled to other locations while assigned to Source HOV, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The ALJ then provided additional analysis by assuming the traveling employee exception did in fact apply. As noted above, 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. Mandujano, 366 S.W.3d at 463-464. Here it is undisputed Owens was no longer in transit at the time of his injury and had completed his workday. Rather, he had parked his vehicle and fell in his driveway. The ALJ considered the risk, which caused Owens' fall, and found it was unrelated to Owens' travel or Insperity's business. Rather, the risk of injury was due to ice accumulating on Owens' personal driveway. Therefore, even assuming the traveling employee doctrine could have applied, the ALJ performed the appropriate analysis under this exception. Substantial evidence supports the ALJ's determination and no contrary result is compelled.

Accordingly, the June 26, 2019 Opinion and Order, and the July 25, 2019 Order on petition for reconsideration rendered by Hon. W. Greg Harvey, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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