MGM Mirage v. Cotton, 121 Nev. Adv. Op. 39 (2005)[1]

EMPLOYMENT LAW – WORKERS' COMPENSATION

Summary

When MGM Mirage employee Brenda Cotton walked through her employer's parking lot ten minutes before her shift, she tripped over a parking lot curb and injured herself. Cotton sustained an ankle fracture and ligament tear. Deciding that Cotton had failed to prove that her injury arose out of her course of employment, MGM denied her workers' compensation claim. MGM's decision was upheld by a hearing officer, because the injury did not occur during working hours. The hearing officer's decision was reversed on appeal. MGM's petition for review was denied by the district court.

Issue and Disposition

Issue

If an employee incurs an injury while on the employer's premises when arriving to or leaving from work, is the employee eligible for workers' compensation benefits?

Disposition

Yes, an employee who is injured on the employer's premises within a reasonable timeframe of working hours is eligible for workers' compensation.

Commentary

State of the Law Before *MGM Mirage* - The "Going and Coming" Rule

According to the "going and coming" rule, employees may not receive workers' compensation for injuries incurred while traveling to or from work. Under NRS 616B.612, employers are required to grant compensation to employees in accordance with the Nevada Industrial Insurance Act (NIIA) for injuries "arising out of and in the course of the employment."[2] An injured employee may not receive compensation under NRS 616C.150 unless it is proved by a preponderance of the evidence that the injury arose out of the course of employment.[3]

Previously, the Nevada Supreme Court declared that the legislature did not envision for employers to be liable for all injuries incurred at the workplace. Instead, a claimant must "establish more than merely being at work and suffering an injury in order to recover."[4] In *Rio Suite Hotel & Casino v. Gorsky*, the Court held the terms "arose out of . . . employment" to require a claimant to prove an injury/workplace causal connection.[5] In *Provenzano v. Long*, the Court upheld a grant of compensation in which an employee was struck by a workplace vehicle after his shift, while he was waiting for his ride home.[6]

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[2] NEV. REV. STAT. § 616B.612 (2004).

[3] NEV. REV. STAT. § 616C.150 (2004).

[4] Rio Suite Hotel & Casino v. Gorsky, 113 Nev. 600, 605, 939 P.2d 1043, 1046 (1997).

[5] *Id.*

[6] Provenzano v. Long, 64 Nev. 412, 428, 183 P.2d 639, 646-47 (1947).

To decide if an employee is acting within the scope of employment when an accident occurs outside of working hours, a key factor is whether the employee is within the employer's control.[7] Thus, the "going and coming" rule precludes compensation for most injuries incurred while traveling to or from work. Such a rule leaves employers liability-free for the every day hazards that employees face.

Effect of *MGM Grand* on Current Law – The Premises-Related Exception

Under *MGM Grand*, the Nevada Supreme Court expressly adopted a premises-related exception to the going and coming rule. The Court held that an employee injured at the workplace while proceeding to or from work, within a reasonable timeframe between working hours, may be entitled to workers' compensation. When using the employer's premises, for example, for parking, the employee must have a reasonable amount of time to proceed between his vehicle and work.[8] According to this premises-related exception to the going and coming rule, employee injuries incurred on the employer's premises while traveling to or from work, within a reasonable time, are sufficient to have occurred "in the course of employment."[9]

The inquiry is two-fold. If an employee proves a "course of employment" injury, the employee must also prove that the injury "arose out of" the employment. A casual link between the injury and workplace conditions must be proved. For example, an injury incurred by an employee while leaving the workplace parking lot five minutes after ending work, would be linked to the course of employment. An injury sustained by an employee while loitering in the workplace parking lot, on a day in which the employee is not on duty, would not be linked to the course employment.

Unanswered Questions

Premises-related exception cases will depend on facts related to time and the working environment. The Court did not establish a bright-line test, but rather looked towards flexible factors, such as whether the injury occurred within a "reasonable time" of beginning or finishing workplace duties. In the future, the courts will be asked to decide which injuries are sufficiently linked to the course of employment and which ones are not.

<u>Survey of the Law in Other Jurisdictions</u>

Before *MGM Grand*, many other jurisdictions had already adopted premises-related exceptions to the going and coming rule. Many states recognize that "[o]ne exception to the 'going and coming' rule is the 'parking lot' rule: An injury sustained on an employer's premises while an employee is proceeding to or from work is considered to have occurred 'in the course of employment.'"[10]

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[7] Tighe v. Las Vegas Metro. Police Dep't, 110 Nev. 632, 636, 877 P.2d 1032, 1035 (1994); Schepcoff v. SIIS, 109 Nev. 322, 325, 849 P.2d 271, 273 (1993).
[8] North Amer. Rock. Corp., S.D. v. Workmen's Comp. App. Bd., 87 Cal. Rptr. 774, 777 (Cal. Ct. App. 1970).
[9] Norpac Foods, Inc. v. Gilmore, 867 P.2d 1373, 1376 (Or. 1994).

[10] Hearthstone Manor v. Stuart, 84 P.3d 208, 211 (Or. Ct. App. 2004) (quoting *Norpac Foods*, 867 P.2d at 1376 (Or. 1994)); *see also* P.B. Bell & Assoc. v. Ind. Com'n of Ariz., 690 P.2d 802, 805 (Ariz. Ct. App. 1984); Smith v. State, Dep't of Labor & Indus., 907 P.2d 101, 105 (Haw. 1995); Milledge v. Oaks, 784

Conclusion

Nevada adopts a premises-related exception to the going and coming rule. An employee injured at the workplace while travelling to or from work, within a reasonable timeframe of working hours, may receive workers' compensation.

N.E.2d 926, 929 (Ind. 2003); Goff v. Farmers Union Accounting Serv., Inc., 241 N.W.2d 315, 317 (Minn. 1976); Barnes v. Stokes, 355 S.E.2d 330, 331 (Va. 1987).