

Noteworthy Decision Summary

Decision: WCAT-2009-03071 **Panel:** H. Morton **Decision Date:** November 25, 2009

Policy items #18.01 (Entry to Employer's Premises) and #19.20 (Parking lots) of the Rehabilitation Services and Claims Manual – Extra-employment activities on employer's premises

This decision discusses whether a personal activity of retrieving a container of oil from the worker's vehicle amounts to a significant deviation, which removes a worker from the course of her employment.

An entitlement officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), accepted the worker's claim for an injury due to a fall in her employer's parking lot on August 31, 2008. After the completion of her work shift the worker fell over a concrete barrier in the employer's parking lot as she was in the process of getting oil from the back of her vehicle for the purpose of adding oil to the engine of her vehicle. A review officer confirmed the Board's decision. The employer appealed the Review Division decision to WCAT.

WCAT confirmed the Review Division decision, finding that the worker's injury arose out of and in the course of her employment. The employer had submitted that the worker took on a totally personal task of checking the level of oil in her vehicle. This task was unrelated to her employment and amounted to a significant deviation, which removed the worker from the course of her employment. The panel noted that pursuant to policy item #18.01 of the *Rehabilitation Services and Claims Manual (RSCM)*, compensation coverage in relation to workers who travel in a personal vehicle to their employer's premises generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift. Policy item #19.20 of the RSCM provides criteria for the purpose of determining whether an injury occurring in a parking lot is compensable, which were generally met in this case. The worker's actions occurred on the employer's premises, and the circumstances of the worker's injury in this case involved a combination of factors, including both her personal actions in walking behind her vehicle to get the oil and a hazard of the employer's premises involving the low concrete barrier over which she tripped and fell. The panel concluded that in the concrete barrier in the employer's parking lot played a role in contributing to her injury, and the circumstances of the worker's injury did not involve more than an insubstantial deviation from the worker's employment.

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Panel: Herb Morton, Vice Chair

Introduction

- [1] The employer has appealed the January 19, 2009 Review Division decision (*Review Decision #R0098432*) to the Workers' Compensation Appeal Tribunal (WCAT). The review officer confirmed the October 15, 2008 decision by the entitlement officer of the Workers' Compensation Board, operating as WorkSafeBC (Board), to accept the worker's claim for an injury due to a fall in her employer's parking lot on August 31, 2008.
- [2] By notice of appeal dated March 27, 2009, the employer requested an oral hearing "to ascertain the true facts." An extension of time was granted for the employer's appeal (*WCAT-2009-02025*, July 30, 2009).
- [3] By letter of May 27, 2009, the WCAT appeal coordinator invited the worker to complete a notice of participation. She advised the worker that if she did not do so, no further information would be provided apart from a copy of the final decision. The worker did not complete a notice of participation and is not participating in this appeal.
- [4] By letter of August 19, 2009, the appeal coordinator advised the employer that based on WCAT criteria, the appeal would proceed by way of written submissions. The employer's representative provided a written submission on September 1, 2009.
- [5] The background facts are not in dispute. The employer's appeal concerns questions of law and policy, and does not involve any significant issue of credibility. I find that the employer's appeal can be properly considered on the basis of the written evidence and submissions.
- [6] By memorandum dated October 9, 2009, I requested additional information from the worker and the employer. The employer provided a written submission dated October 22, 2009. No response was received from the worker. By letter of November 10, 2009, the WCAT appeal coordinator confirmed that submissions were considered complete.

Issue(s)

- [7] Did the worker's injuries due to a fall in the employer's parking lot arise out of and in the course of her employment?

Jurisdiction

- [8] The Review Division decision has been appealed to WCAT under section 239(1) of the *Workers Compensation Act* (Act).

Background

- [9] The worker was employed as a night housekeeper. She submitted an application for compensation in relation to her fall on August 31, 2008. She described the occurrence of her injury as follows:

I took from the trunk of my car a jug containing engine oil about one liter when I tripped over the stone divider in the parking lot of the [employer's building] and fell forward injuring my back[.]

[block capitalization removed]

- [10] An employer's report to the Board disputed the worker's claim. The employer explained:

The injury occurred while the employee was off duty, outside of work hours. She was putting oil in her car and chose to do it on the employer's parking lot. Putting oil in her car is an action that is outside the normal scope of her duties and is also not a task that is incidental to her normal job duties. The injury did not arise as a course of employment.

The employee had completed her shift and headed out to the parking lot. She claimed to be putting oil in her car and fell or tripped on the parking barrier. A resident at the [employer's building] saw this employee on the ground holding the handle on her car....

- [11] The worker's shift was from 11:00 p.m. until 8:00 a.m., and her accident occurred at approximately 8:10 a.m. The worker was taken by ambulance to hospital. She was diagnosed with an L1 extension-type fracture, with ankylosing spondylitis. She underwent surgery on September 2, 2008 for a T9 to L4 posterior spinal fusion with segmental instrumentation.

- [12] The case manager contacted the employer and the worker by telephone to obtain further information regarding the occurrence of the worker's accident. On September 11, 2008, the case manager noted:

I spoke to [the employer] who confirmed the accident employer owns, maintains and controls the parking lot. She said the worker does not have an assigned spot and in fact none of their day employees park on site, but

they allow the night staff to park there for safety reasons. The lot is adjacent and attached to the work building.

[The employer] said that the worker left around 8:00 am and the injury occurred about 8:10 am. The worker had apparently backed her van into a parking spot. It looked as though she had opened her hood to put oil into it, gone around to the back of the van to retrieve the oil, and tripped over a concrete barrier as she was walking from the back of the van to the front.

[13] On September 23, 2008, the case manager spoke with the worker and noted:

The claimant advises that when she arrived at work the night before a red light was on, and she thought maybe she might need to put oil in her vehicle. She proceeded to work, completed her shift and walked out to her vehicle. She released the hood, walked to the back door of her vehicle, got a can of oil and was walking to the front of the vehicle, when she tripped over a hugh [sic] rock (parking barrier) and fell.

[14] By decision dated October 15, 2008, an entitlement officer accepted the worker's claim for compensation. She cited the policy at item #19.20 of the *Rehabilitation Services and Claims Manual, Volume II* (RSCM II), concerning parking lots, and reasoned:

This policy provides that for the purpose of determining whether an injury occurring in a parking lot is compensable, the Board looks at five questions.

The claimant had just completed her shift and was in the employer's parking lot when she tripped and fell on a parking barrier. After reviewing the policy on parking lot claims, I find that the worker meets all the guidelines as outlined in the above policy. Although the claimant was preparing to put oil into her car, I find that this was a minor deviation being done prior to leaving the parking lot. Therefore, I find that the requirements of s.5(1) of the *Act* have been met, and it is my decision to accept that the worker sustained an injury that arose out of and in the course of her employment and therefore her claim has been accepted.

[15] The employer requested a review by the Review Division. By decision dated January 19, 2009, the review officer confirmed the entitlement officer's decision. The review officer reasoned:

The worker's injury occurred in the employer's parking lot. There is a specific policy, which provides guidance in this situation. Policy item #19.20, *Parking Lots*, states there are five basic questions to ask when determining whether the worker's injury is acceptable under the *Act*.

There is no dispute that the parking lot was provided by the employer for the worker; it is controlled by the employer; and contiguous to the place of employment. The employer confirms that as the worker works on the night shift, the worker is permitted to use the parking lot for safety reasons. The employer also confirms that it controlled the parking lot and the parking lot is contiguous to the place of employment.

There are two remaining questions: was the injury caused by a hazard of the premises and did the injury occur proximal to the start or the stop of the shift.

The employer's representative simply submits that the worker's injury was caused by the unauthorized use of the parking lot. I take this to mean that the representative believes the worker's injury was not caused by a hazard of the premises.

Policy item #19.20 states the requirement that the worker's injury must be caused by a hazard of the premises is to limit acceptance to only those injuries which have a connotation of employment relationship. For example, a slip on a pool of oil or a trip over an obstruction would qualify. The term "hazard of the premises" is not an absolute requirement for compensation coverage. Rather it illustrates the distinction between injuries resulting from personal causes and those resulting from the employment. In effect, the type of injury would qualify for acceptance if it occurred on a factory floor would also qualify for acceptance if it occurred in a parking lot.

I am aware that at the time, the worker was retrieving a jug of oil when she tripped over the parking barrier. However, I find that the worker's injury was the result of a hazard of the premises. The worker's injury did not occur as a result of her own personal vehicle or her own belongings. The policy provides an example of a worker, who nips her fingers in her car door, which would not have the claim accepted. This was not the case in this situation. Rather it was the result of a hazard of the parking lot, the parking barrier. The act of retrieving the jug of oil does not negate the fact that the worker tripped over an obstruction of the parking lot, which the policy states would qualify for acceptance of the claim.

The last question is whether the injury occurred proximal to the start or the stop of the worker's shift. The employer confirms the worker's shift is normally 11 p.m. to 8 a.m. There is no dispute that the worker's injury occurred at 8:10 a.m. Therefore, I conclude that the worker's injury occurred close to the end of the worker's shift.

I find that the worker's injury arose out of and in the course of her employment.

[16] By submission of September 1, 2009, the employer argues:

Had the worker taken the ordinary course, at the completion of her shift, gotten into her car and driven away, none of this would have occurred on the company premise.

What the worker did, was decide to prolong her stay on the work site, and take on a totally personal task of reviewing the level of oil in her vehicle. Had this been a work requirement or this task one that is reasonably incidental to the performing of her job, then this is a WCB covered claim. However, this is not in any way a reasonably incidental task of her employment, nor was she performing a task that's connected to the employment or to the benefit of the employer – it's personal.

At the point this worker decided to take on a personal task, unconnected to the employment environment, she took herself out of the course of employment, and became "off hours", no different than if a worker decided to run a personal errand on their break, and got hurt doing it.

[17] The employer argues that "[t]he extent and the remoteness to which adding oil to her vehicle deviates from the worker's regular employment activities is what clearly takes this out of the course of employment."

[18] By memorandum of October 9, 2009, I provided the parties with copies of maps/photos printed from Google Maps. Information was requested from the parties as to whether these correctly identified the employer's premises, and the location of the worker's fall. The employer's representative confirmed that the photos correctly identified the employer's site. He clarified that the worker had been parked in a space immediately adjacent to the employer's building. The worker's fall involved one of the low concrete barriers similar to those which were more clearly visible in the nearby parking lot.

Law and Policy

[19] At issue in this appeal is whether the worker's injuries in her fall on August 31, 2008 arose out of and in the course of her employment. The worker's claim for a personal injury was made under section 5(1) of the Act. This provides:

Where, in an industry within the scope of this Part, personal injury or death arising out of and in the course of the employment is caused to a

worker, compensation as provided by this Part must be paid by the Board out of the accident fund.

- [20] Under section 5(4) of the Act, a rebuttable presumption applies where the worker's injury is caused by accident, and one of the tests in section 5(1) is met:

In cases where the injury is caused by accident, where the accident arose out of the employment, unless the contrary is shown, it must be presumed that it occurred in the course of the employment; and where the accident occurred in the course of the employment, unless the contrary is shown, it must be presumed that it arose out of the employment.

- [21] Section 250 of the Act further provides:

(2) The appeal tribunal must make its decision based on the merits and justice of the case, but in so doing the appeal tribunal must apply a policy of the board of directors that is applicable in that case.

...

(4) If the appeal tribunal is hearing an appeal respecting the compensation of a worker and the evidence supporting different findings on an issue is evenly weighted in that case, the appeal tribunal must resolve that issue in a manner that favours the worker.

- [22] Similar provisions apply to decision-making by the Board, pursuant to subsections 99(2) and (3) of the Act.

- [23] All references to policy in this decision mean the policy contained in the *RSCM II*, at the time of the worker's injury on August 31, 2008. Relevant policies of the board of directors included the following (with emphasis added):

#14.00 ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

Before a worker becomes entitled to compensation for injury under the Act, the injury must arise out of and in the course of employment.

Confusion often occurs between the term "work" and the term "employment". Whereas the statutory requirement is that the injury arise out of and in the course of employment, it is often urged that a claim should be disallowed because the injury is not work related or did not occur in the course of productive activity. There are, however, activities within the employment relationship which would not normally be considered as work or in any way productive. For example, there is the

worker's drawing of pay. An injury in the course of such activity is compensable in the same way as an injury in the course of productive work.

Lack of control of a situation by the employer is not a reason for barring a claim otherwise acceptable. Control by an employer is an indicator that a situation is covered under the *Act* at a particular time, but if that control does not exist there may be other factors which demonstrate an employment connection.

No single criterion can be regarded as conclusive for deciding whether an injury should be classified as one arising out of and in the course of employment. Various indicators can be and are commonly used for guidance. These include:

- (a) **whether the injury occurred on the premises of the employer;**
- (b) whether it occurred in the process of doing something for the benefit of the employer;
- (c) whether it occurred in the course of action taken in response to instructions from the employer;
- (d) whether it occurred in the course of using equipment or materials supplied by the employer;
- (e) whether it occurred in the course of receiving payment or other consideration from the employer;
- (f) whether the risk to which the employee was exposed was the same as the risk to which the employee is exposed in the normal course of production;
- (g) whether the injury occurred during a time period for which the employee was being paid;
- (h) whether the injury was caused by some activity of the employer or of a fellow employee;
- (i) whether the injury occurred while the worker was performing activities that were part of the regular job duties; and
- (j) whether the injury occurred while the worker was being supervised by the employer.

This list is by no means exhaustive. All of these factors can be considered in making a judgement, but no one of them can be used as an exclusive test.

#18.01 Entry to Employers Premises

Compensation coverage generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift. Thus where a worker is travelling to work by automobile, there is no coverage for compensation from home to the point of entry to the employer's premises, but there is coverage from there to the worker's particular place of work. However, a Board decision denied a claim from a worker who, having entered her employer's premises and decided not to cross a picket line, was injured before she had left those premises as the result of tripping over a cement abutment.

#18.41 Personal Activities During Business Trips

The basic principle followed by the Board is set out in Larson's *Workmen's Compensation Law* as follows:

“Employees whose work entails travel away from the employer's premises are held . . . to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown.” (5)

This principle covers the activities of travelling, eating in restaurants, and staying in hotels overnight where these are required by a person's employment.

What is meant by the reference to a “distinct departure on a personal errand”? It clearly does not simply refer to such everyday activities as eating, sleeping or washing which, in the case of most non-travelling employees would be regarded as personal activities outside the scope of the employment when performed outside normal work hours. Such activities will normally be regarded as within the scope of the employment of an employee who is required to travel. On the other hand, if, for example, a person on a business trip attends a theatre or spends the evening in a public house, these would probably not be regarded as activities in the course of employment.

The test to be applied is set out in policy item #21.00.

...

In another decision, a sales supervisor sustained a back injury while lifting a spare tire into the trunk of his car on Saturday, while preparing for a business trip to commence on Monday. If the worker had been lifting display materials into the trunk of his car or had been involved in cleanup or repairs in which he would not normally have been involved, then there may be little doubt that an injury received under such circumstances would be compensable. The worker's evidence at the board of review hearing, however, indicated that employees were responsible for all maintenance on their cars. The question then is whether the standard of upkeep was any more than that which a person would normally do. In this case, it appears that the repairs effected and the subsequent cleanup were normal duties carried out by car owners. There is little on the facts to suggest that these actions were connected with the employment relationship as opposed to being undertaken in the worker's capacity as a car owner. The claim was therefore disallowed.

#19.20 Parking Lots

For the purpose of determining whether an injury occurring in a parking lot is compensable, the Board looks at five basic questions.

First, was the lot provided by the employer for the worker? The unauthorized use of a parking space by a worker would normally exclude the acceptance of a claim on the basis that the injury was not work related. There will, however, be exceptions where the employer, while not authorizing the parking, has condoned the practice by default in failing to take action to prohibit the practice.

Second, was the lot controlled by the employer? (The fact that a lot is owned or leased by an employer does not, in itself, automatically imply that it is controlled by the employer.) Claims are received for injuries occurring in parking lots not owned by the employer, but as a result of some arrangement, the worker is permitted to park there. If the lot is controlled by the employer, a claim may be acceptable. In claims involving shopping centre or shopping mall parking lots which are designed primarily for customer use and not controlled by the individual employer of a worker, an injury occurring on such premises would not normally be considered as acceptable.

Third, was the injury caused by a hazard of the premises? This is intended to limit acceptance to only those injuries which have a connotation of “employment relationship”. For example, a slip on a pool of oil or a trip over an obstruction would qualify. On the other hand, workers who nip their fingers in their own car doors would not have their claims accepted. (7) There will also be claims which are not a direct result of the premises which may qualify, such as a pedestrian struck by a fellow employee’s car. **The term “hazard of the premises” is not an absolute requirement for compensation coverage. Rather it illustrates the distinction between injuries resulting from personal causes and those resulting from the employment.** In effect, the type of injury that would qualify for acceptance if it occurred on a factory floor would also qualify for acceptance if it occurred in a parking lot.

Fourth, was the parking lot contiguous to the place of employment? The word “contiguous” is defined as meaning both adjacent to and attached to. While desirable, it should not be deemed a mandatory prerequisite for acceptance. Non-contiguous lots, particularly those under the direction, supervision or control of an employer do qualify although coverage does not normally extend to workers while they are making their way to them across and along public thoroughfares.

Finally, did the injury occur proximal to the start or stop of the shift? If there is a significant time gap between the time of an accident and the start or stop of the shift, the matter is investigated to determine whether there is an employment relationship.

#19.31 Injury Results from Worker's Personal Property

An injury which arises in the course of the employment will not be compensable if it arises out of exposure to a hazard or risk which is not related to the worker’s employment. If a worker is injured through exposure to a hazard which the worker, as a personal matter, introduced into the workplace, that injury is not considered to have arisen out of the worker’s employment. This principle was applied in a Board decision where the worker fell backwards off a bench on which he was sitting eating his lunch. As a result of the fall, a paring knife which he had brought from home for the purpose of eating his lunch, stuck into his thigh. The claim was denied because the worker had introduced an exceptional hazard onto the premises of the employer for his own personal use. The injury suffered would have been very minor or non-existent if the paring knife brought to work by the worker had not been lying on his lap at the time of the injury.

It is not essential that the personal property that causes the injury be intrinsically hazardous. It is sufficient that it causes the injury in the particular case. In general, injuries are not compensable where they result entirely from personal property brought onto the employer's premises by workers for their own purposes and have no connection with their employment.

#20.40 Provision of Clothing and Equipment Required for Job

The fact that a worker is required to provide tools for the job does not mean that carrying the tools to work or away from work becomes part of the employment. A worker may have to satisfy many prerequisites before obtaining a job, for example, education, experience, physical condition, clothing, equipment, or travelling to the work site. After the completion of a job, a worker may have to carry out various activities of a consequential nature, for example, cleaning clothes, removing equipment or travelling from the work site. None of these activities are normally covered as part of a worker's employment under the *Act*. Nor does the mere fact that the employer pays certain expenses associated with these activities result in coverage.

#21.00 PERSONAL ACTS

There is a dilemma that is always inherent in workers' compensation. The difficulty, of course, is that the activities of workers are not neatly divisible into two clear categories, their employment functions and their personal lives. **There is a broad area of intersection and overlap between work and personal affairs, and somewhere in that broad area the perimeter of workers' compensation must be mapped.** An incidental intrusion of personal activity into the process of work will not require a claim, otherwise valid, to be denied. For example, it has long been accepted that compensation is not limited to injuries occurring in course of production. Where persons are injured while at work in the broader sense of that term, claims will not be denied on the ground that at the precise moment of injury they were blowing their noses, using the toilets or having their coffee break. Similarly it has long been accepted that when a truck driver stops for a meal in the course of a long journey and is injured while crossing the road the driver is just as much entitled to compensation as a factory worker injured on the way to the works canteen. Conversely, the intrusion of some aspect of work into the personal life of an employee at the moment an injury is suffered will not entitle the employee to

compensation. For example, if someone slips in the living room at home and is injured, that person is not entitled to compensation simply on the ground that at the crucial moment the person was reading a book related to work. **In the marginal cases, it is impossible to do better than weigh the employment features of the situation in balance with the personal features and reach a conclusion (which can never be devoid of intuitive judgment) about which should be treated as predominant.**

Where the common practice of an employer or an industry permits some latitude to employees to attend to matters of personal comfort or convenience in the course of employment, compensation for injuries occurring at those moments is not denied simply on the ground that the employee is not at the crucial moment in the course of production. This is within the scope of the established doctrine relating to acts which, though not in themselves productive, are nevertheless a normal incident of employment.

#21.10 Lunch, Coffee and Other Breaks

A worker is considered to be acting in the course of employment not only when doing the work the worker is employed to do but also while engaged in other incidental activities. For example, a worker does not cease to be in the course of employment while having a lunch or coffee break on the employer's premises, while going to the toilet, having a smoke or other such activities. Therefore, if while engaged in such activities the worker is injured by virtue of some aspect of the work environment, a claim will be accepted. On the other hand, not all injuries occurring while engaged in such activities will be compensable. The injury must "arise out of" the employment as well as "in the course of" it. Thus, for example, if a worker has a heart attack while having a smoke during working hours a claim will likely be denied. This is because the heart attack probably arose from natural causes and was not caused by any aspect of the employment rather than because, in having a smoke, the worker was no longer in the course of employment.

In one case the worker, during a paid coffee break, went out from her place of work to her employer's parking lot with the intention of moving her car closer to the mill entrance. However, before she could do this, she trapped her finger in the car door while shutting it.

The purpose of moving the car was to allow her to leave work more quickly and easily at the end of the day. She did not cease to be in the course of her employment when she walked out to the parking lot. It was not unreasonable for her to go out to her car during her coffee break. The evidence established that there was a common practice for employees to do this which was acquiesced in by the employer. **If, for example, she had tripped over a pot hole in the lot, any resulting injury would have been compensable. It would have arisen out of the employment, as well as in the course of the employment, as it was caused by a hazard of the employer's premises.** It was considered that, in trapping her finger in her car door, she had not suffered an injury which arose out of her employment. The car was her personal property which she had brought onto the employer's premises for her own convenience. It was a hazard arising from the use of this property which caused her injury.

This case should be contrasted with another claim where the worker during a break in production, ran out to his car in the parking lot to get a package of cigarettes and twisted his ankle. His claim was denied. A person is considered to be in the course of his employment while entering and leaving his employer's premises at the start and end of his shift and at other recognized coffee or lunch breaks. This may also extend to other times when a worker has to leave his employer's premises for good reason, for example, in emergencies. However, not all trips to and from the worker's place of work can be treated in this way. There will be trips for personal reasons unrelated to the work and which cannot be said to be simply incidental to that work. There is no coverage in such cases. The trip made in this case was of that kind.

It was considered that more was involved here than such activities as blowing a nose, smoking a cigarette, or going to the toilet, which would normally be accepted as incidental to the employment. The rationale for accepting such activities is that they benefit the employer by making his employees comfortable while they are working and, therefore, in the long run, more efficient. It can, of course, be argued that the worker's going to get his cigarettes benefited his employer by putting him in a position where he would be able to smoke and make himself comfortable. However, it seemed that this doctrine should be limited to the specific activities which make the worker more comfortable and not to other secondary activities which put him in the position of doing these activities.

- [24] Additional policies concerned substantial and insubstantial deviations from employment include the following excerpts (with emphasis added):

#16.20 Horseplay

A worker who is injured through participation in horseplay is not for that reason alone denied compensation. The conduct of the worker which caused the injury must be examined to determine whether it constituted a **substantial deviation** from the course of the employment. An **insubstantial deviation** does not prevent an injury from being held to have arisen in the course of employment.

#18.32 Irregular Starting Points

Where the worker terminates productive activity at one point and is required to commence productive activity at another point, travel between those points is part of the employment and is in the course of employment as long as the worker is travelling reasonably directly and is not making **major deviations** for personal reasons.

#18.33 Deviations From Route

Where a worker is covered while travelling to a place of work, that worker must proceed with reasonable expedition and without **substantial deviation** from the most convenient route. Otherwise the worker may be regarded as no longer in the course of employment.

#18.42 Trips Having Business and Non-Business Purpose

Whatever other requirements there may be for accepting a claim for an injury occurring on a trip made for business and non-business purposes, one essential is that the injury occur at a time when the worker is or is substantially on the route which leads to the place where the business purpose is to be carried out. No compensation is payable where the injury occurs while the worker is making a **significant deviation** from that route for non-business purposes.

Reasons and Findings

- [25] The employer submits that the worker's injury, due to her fall in the employer's parking lot on August 31, 2008, did not arise out of and in the course of her employment. While workers' compensation coverage normally extends until a worker has left the employer's premises, in this case the worker's fall occurred as she was in the process of getting oil from the back of her vehicle for the purpose of adding oil to the engine of

her vehicle (after the completion of her work shift). The employer submits the worker was engaged in a purely personal task outside of normal work hours, and outside of her normal work routine.

- [26] The employer submits that if the worker had slipped on ice or tripped over a parking divider while walking to her vehicle, her claim would be compensable. In this case, however, the worker's injury did not occur while walking to her vehicle. The employer submits that in this case, the worker decided to prolong her stay on the work site and took on a totally personal task of checking the level of oil in her vehicle. This was a personal task unrelated to her employment. The employer submits this amounted to a significant deviation, which removed the worker from the course of her employment.
- [27] Pursuant to the policy at #18.01, compensation coverage in relation to workers who travel in a personal vehicle to their employer's premises generally begins when the worker enters the employer's premises for the commencement of a shift, and terminates on the worker leaving the premises following the end of the shift. Workers' compensation coverage applies from the point of entry to the employer's premises. Accordingly, and as acknowledged by the employer, workers' compensation coverage applied to the worker in connection with her walk to her vehicle in the employer's parking lot, at the completion of her shift. Workers' compensation coverage would also apply in connection with the worker driving her vehicle through the employer's parking lot, until the point of departure from the employer's premises.
- [28] The requirements of the policy concerning parking lots (item #19.20) are generally met in this case. The worker, in common with other night shift workers, was permitted to park next to the employer's building. The parking lot was owned and controlled by the employer. The worker's injury appears to have involved tripping on a low concrete barrier, placed at the rear of the parking space (likely for the purpose of ensuring vehicles did not go past the designated point). Accordingly, a hazard of the premises was a factor in the worker's fall. The worker's injury was not caused by some contact with her personal vehicle. The parking space was contiguous to the place of employment. The worker's injury occurred proximal to the stop of the worker's shift.
- [29] I agree with the employer's submission that the worker's actions in preparing to add oil to her vehicle involved an activity which was personal, rather than work-related, in nature. As set out in the policy at item #18.41, a worker's activities in performing maintenance on their personal vehicle, even in preparation for a work journey, are considered personal in nature as being incidental to personal ownership of the vehicle.
- [30] At issue, however, is whether the worker's actions at the time of her fall involved a substantial or major deviation from her employment.

- [31] Several policies indicate that workers' compensation coverage does not cease to apply in the event of an insubstantial deviation from employment (see, for example, items #16.20, #18.32, #18.33 and #18.42). Unlike the example provided in policy at item #18.41, where the worker was lifting a spare tire into his car trunk at home, the worker's actions occurred on the employer's premises. The circumstances of the worker's injury in this case involved a combination of factors, including both her personal actions in walking behind her vehicle to get the oil and a hazard of the employer's premises involving the low concrete barrier. The circumstances of the worker's injury involved an area of intersection and overlap between her work and personal affairs.
- [32] The employer's key point is that had the worker simply got into her vehicle and driven away, the accident would not have occurred. The evidence indicates the worker had backed into the parking space, and the parking barrier was near the rear of her vehicle. It appears likely the worker would not have had a reason to go the back of her vehicle, in the area of the parking barrier, had she not been engaged in the personal task of adding oil to her car engine. On the other hand, the worker could just have easily gone to the back of her vehicle, had she been carrying some other incidental item (such as an umbrella, lunchbox or coat) which she wished to place in the trunk or back of her vehicle. Workers' compensation coverage would appear rather ephemeral in nature, were it to be lost simply by virtue of the fact that a worker went to place an item in the trunk of his or her vehicle prior to driving away from the employer's premises.
- [33] As noted above, the worker was not injured due to some contact with her vehicle. She did not, for example, hurt herself in the process of opening or closing the hood, or other door, of her vehicle.
- [34] The worker's actions could be characterized as capable of being separated into two different trips. The first trip involved walking from the building in which she worked to her car in the parking lot. The second trip involved walking to the back of her car to get the engine oil. The first trip was clearly work-related. Arguably, the second trip to the back of her vehicle to get the oil, following which she fell over the concrete barrier, occurred as she was engaged in a trip to move to the front of her vehicle while engaged in personal activities unrelated to her employment. I consider, however, that this may involve drawing too fine a distinction.
- [35] The worker's injury, which involved a trip and fall over a concrete barrier, involved an accident. Policy at item #14.10 concerning the section 5(4) rebuttable accident presumption provides:

Thus for injuries resulting from an accident, evidence is only needed in the first instance to show either that the injury arose out of the employment or that it arose in the course of employment. The balance is presumed,

unless there is evidence to the contrary. Generally speaking, “out of the employment” concerns the cause of injury and “in the course of the employment” its time and place.

[36] In terms of the time and place of the worker’s injury, it occurred on the employer’s premises proximal to the end of her work shift prior to her departure from the employer’s premises. I consider that the worker’s injury occurred in the course of her employment. Accordingly, a rebuttable presumption arises that the injury also arose out of the worker’s employment.

[37] Policy at item #14.20 further explains:

Consider the example of a worker who slips on the floor at work and is injured. Of course the worker could have slipped elsewhere and suffered a similar injury, but the worker didn’t. The injury resulted from an accident in the course of employment. It is therefore presumed to have arisen out of the employment, and the injury is compensable, **unless there is affirmative evidence that it was caused entirely by factors extrinsic to the employment.**

[emphasis added]

[38] The circumstances of the worker’s injury are in a grey area. The worker’s actions were of a personal nature, in relation to retrieving a container of oil from her vehicle for the purpose of adding oil to the engine of her vehicle. However, her movement to the back of her vehicle could just as easily have involved placing some personal or work-related item in the back of her vehicle. Her injury was not directly related to her intended action of adding oil to her vehicle (i.e. such as while opening or closing the hood of her vehicle, or removing her oil cap). The concrete barrier in the employer’s parking lot played a role in contributing to her injury. I am not persuaded that the circumstances of the worker’s injury involved more than an insubstantial deviation from the worker’s employment.

[39] With reference to the policy at item #21.00, I do not consider that the circumstances of the worker’s injury involved an incidental intrusion of some aspect of work into the personal life of the worker. Rather, I consider that the circumstances of the worker’s injury are better characterized as involving an incidental intrusion of personal activity into the process of work which does not require the worker’s claim to be denied.

[40] On balance, I am not persuaded that the evidence establishes that the worker’s actions at the time of her injury involved a substantial deviation from her employment. I do not consider that the accident presumption is rebutted. I am in agreement with the decision of the review officer. The employer’s appeal is, therefore, denied.

- [41] No expenses were requested, and it does not appear from a review of the file that any expenses were incurred related to this appeal. I therefore make no order regarding expenses of this appeal.

Conclusion

- [42] I confirm the Review Division decision. The worker's injury on August 31, 2008 arose out of and in the course of her employment.

Herb Morton
Vice Chair

HM/gw