

**BEFORE THE INDUSTRIAL ACCIDENT BOARD
OF THE STATE OF DELAWARE**

BRANDI BULLOCK,)	
)	
Employee,)	
)	
v.)	Hearing No. 1473630
)	
HOLLYWOOD MOTEL,)	
)	
Employer.)	

ORDER

This matter came before the Board on Thursday November 1, 2018. This is a joint Motion filed by the parties for a determination by the Board as to whether Brandi Bullock (“Claimant”) was injured in the course and scope of her employment at the Hollywood Motel (“Employer”). Claimant has filed a Petition to Determine Compensation Due which is scheduled for a hearing on February 15, 2019. The parties submitted a joint stipulation of facts pursuant to I.A.B. Rule No. 14. The following facts are not in dispute. In addition to having an employment relationship, the parties also had a landlord tenant relationship as Claimant also resided at her place of employment. Claimant injured her ankle when she fell on June 1, 2018 at 7:57 A.M. whilst exiting the motel office after making a rent payment. The Board heard testimony from Claimant and the motel manager, Shiv Patel.

Claimant testified on her own behalf. She lived at the Hollywood Motel which is on 145 South Dupont Hwy in New Castle Delaware. She lives in room 113 with her fiancé and four children. She has been employed at the motel for five years. Claimant testified that her duties include cleaning the hotel rooms as a housekeeper and cleaning up trash around the exterior of the motel. She also does the laundry associated with cleaning such as the towels and sheets for the

rooms. Claimant shovels snow and keeps the sidewalks around the motel salted in the winter weather. Sometimes when the manager is not on the property she will watch the office. This includes taking payments and checking in new tenants. If a tenant loses their key she has to deal with that situation as well. Claimant indicated that her fiancé is also an employee of the motel.

Claimant estimated that her housekeeping hours run about 20+ hours per week. Time spent on her other duties varies. She works from early in the morning to late at night. Claimant testified that she has no set shift. Claimant agreed that she is essentially on call and needs to be able to deal with tenants 24/7. When she is not on the property her fiancé is there and if they are both gone they inform the office that they will be off the property and for how long. Employer has a small number of employees which include Claimant, her fiancé and the office staff. Her fiancé performs minor maintenance tasks and is there for security. They also both will fill in for the office staff when necessary. Claimant estimated she is on the property 95% of her time. She is only away from the property when she goes to church, shopping or when she takes her children somewhere. Claimant noted there are 26 rooms in the motel and estimated they had a 70% occupancy rate. Claimant only takes several days off per year such as Christmas or Thanksgiving. Claimant testified that the Employer is able to contact her via her cell phone when she is off the property. For on property communications they have been supplied with two way radios to communicate with the office. She does not like to use the two way radio because there is a lot of static and it is hard to hear.

Claimant then testified about the date of the accident, June 1, 2018. Claimant had just put her children on the school bus. Her fiancé had left her a note asking her to make a rent payment with his credit card. After putting her children on the bus she went to the office to make the payment but that that card did not work. She then got her own credit card to make the rent payment.

She also noted that the father of the motel manager was in the office at the time and it was difficult to have a conversation with him because of the language barrier. Claimant was able to make the rent payment using her own credit card but on her way out of the office she tripped and fell injuring her ankle. Claimant also believes that she passed out for a period of time. Ultimately she went to Christiana Care to obtain x-rays for her ankle. Had she not fallen she was on her way back to her room to put on her work clothes to start cleaning rooms. Normally once she puts her kids on the bus she begins her workday. Although Claimant did testify that she often had to do work activities prior to putting her kids on the bus during the school year. Sometimes the tenants will need a key or ask for some toiletries or towels. Claimant testified she is not paid hourly and a record of her hours is not kept. She is paid a salary of \$400 every two weeks. She noted that her rent was thousand dollars a month. Sometimes she is called for an emergency by the management such as if a tenant leaves in a hurry and the room needs to be cleaned or a tenant is put out on off hours. Claimant confirmed that her primary supervisor is Shiv Patel the motel manager. In addition to Shiv there is also Shiv's father and Shiv's brother-in-law who work in the office. She does take instructions from all of them.

On cross examination Claimant confirmed that she did complete an application when she initially began working at the motel. This was under different management. She also noted there was a three month time in gap where no one was really in charge. The application references her job title of housekeeper. She conceded that there was nothing on the application about other job duties such as maintenance listed on the application. Claimant confirmed that her paycheck is direct deposit. She has to go to the office to pay rent two times a month and is given a receipt for the payment. Claimant agreed that if she was injured while in her room doing personal activities she would not be making a workers compensation claim. Claimant confirmed that she was only in

the office that day to pay rent. Claimant testified that she knows which rooms to clean on any particular day because there is a log indicating which ones to do. There is no particular timeframe for her to get the cleaning done, she just works until the job is finished for the day. Claimant also testified that there are security cameras and she has one in her room so she can monitor when somebody comes to the office. Claimant confirmed that she was living at the motel before she became an employee and doesn't receive any savings on her rent because she is an employee.

Shiv Patel testified on behalf of Employer. He confirmed that he is the general manager of the motel. His activities are basically monitoring the day-to-day operations of the hotel and staff. He agreed that the housekeeper was there to clean the 26 motel rooms. Mr. Patel testified that Claimant would have the same exact job duties if she was not also living there. They do not in any way pay or subsidize her rent. Mr. Patel confirmed that checkout time for the hotel was at 11 AM. He indicated that there were no specific reasons to be cleaning rooms at eight in the morning unless Claimant was specifically contacted by management to do so. On cross examination Mr. Patel confirmed that he was normally at the motel 24/7 and usually works from 8 AM to 11 PM. He looks after the property and the office. He also inspects the housekeeping and cleaning work. He does not normally need to direct Claimant with her cleaning tasks.

Mr. Patel indicated that Claimant's fiancé comes and gets the daily housekeeping task list at about 9 AM. Mr. Patel testified that Claimant usually starts between 10:45 and 11 AM. He rarely sees her beginning her cleaning tasks before that time. He does not set a specific time for Claimant to do her cleaning work but usually it is done by one in the afternoon. Mr. Patel acknowledged that Claimant does help her fiancé with some of the exterior work and snow removal as she mentioned, but this is not part of her job. That is something she is voluntarily doing to help her fiancé with his job. He is not aware of tenants asking for things on off hours. He is not aware of any reason that

Claimant would have to go into the office, in particular late at night, as that is not part of her job. Mr. Patel indicated that he was aware that Claimant was doing other activities. He expects her daily cleaning work to be 2 to 2 ½ hours. He admitted that Claimant does go into the office to check out tenants. Other than the employment application there really isn't a separate written employment contract. He confirmed that the exterior is not part of Claimant's job. He is on the property most of the time but not always because he might be in school.

Course and Scope of Employment

The Workers' Compensation Act ("Act") is the exclusive remedy between employer and employee for "personal injury or death by accident *arising out of and in the course of* employment." DEL. CODE ANN. tit. 19, § 2304 (emphasis added).¹ Thus, the employment connection focuses on two aspects: whether the injury was "in the course of employment" and whether the injury arose out of that employment ("scope"). "[Q]uestions relating to the course and scope of employment are highly factual. Necessarily, they must be resolved under a totality of the circumstances test." *Histed v. E.I. DuPont de Nemours & Co.*, 621 A.2d 340, 345 (Del. 1993). However it should be noted that "[T]he employee does not have to be injured during a job-related activity to be eligible for worker's compensation benefits." *Tickles v. PNC Bank*, 703 A.2d 633, 637 (Del. 1997)(citing *Storm v. Karl-Mil, Inc.*, 460 A.2d 519, 521 (Del. 1983)). The issue in this case is very specific; Whether Claimant's injury while exiting the motel office was in the course and scope of her employment. The Delaware Supreme Court has recently addressed issues

¹ The Act provides that, to be considered covered, an injured employee must be:
engaged in, on or about the premises where the employee's services are being performed, which are occupied by, or under the control of, the employer (the employee's presence being required by the nature of the employee's employment), or while the employee is engaged elsewhere in or about the employer's business where the employee's services require the employee's presence as part of such service at the time of the injury....
DEL. CODE ANN. tit. 19, § 2301(15)a.

of course and scope. Often employees are injured off the premises and issues arise with regard to the going and coming rule. This means in essence that an employer is not liable for an injury that occurs during the employees commute to and from work. The Court determined however that the analysis should not start with this rule or one of the multitude of exceptions to the rule; rather the analysis starts with the employment relationship or contract. *Spellman v. Christiana Care Health Services*, 74 A.3d 619 (Del. 2013). Using the facts available, in other words the totality of the circumstances, the Board should look to the context of the employment relationship to determine whether an injury is “sufficiently work related”. *Spellman* at 626. With this in mind and based on the facts presented the Board finds that Claimant was not within the course and scope of her employment at the time of the accident.

Claimant relies on the case of *State of Delaware v. George Glascock* in support of her position that she was in the course and scope of her employment at the time of the accident. Mr. Glascock was an investigator for the Department of Corrections when he was killed in a motor vehicle accident while driving a state vehicle. The Superior Court affirmed a Board decision awarding him benefits, ruling that he was in the course and scope of his employment at the time of the accident. *State v. Glascock* WL 524078 (Del.Super. 1997). Claimant’s reliance on the *Glascock* case is misplaced. Claimant argues that her situation is analogous because she is on call 24/7 just as the claimant was in that case. There are several distinguishing factors, not the least of which was that Glascock was killed as a result of the motor vehicle accident so there was no testimony to ascertain where he was going at the time of the accident. Further he was a hybrid employee with a fixed work place but was also required to travel to different locations in a state vehicle that was provided for his use for business and non-business related purposes. The issue there was really an off premises going and coming rule issue, in other words the primary issue was

whether the injury arose out of the employment. In the instant case we do not have that issue since the injury occurred on the employer's premises, rather the issue is whether the injury occurred in the course of Claimant's employment. An employee does not have to be performing a specific job duty at the time of the accident. For instance there is an allowance for the personal comfort of an employee, or a situation such as the *Tickles* case. The employee had arrived on employer's premises and stopped to withdraw money from an ATM provided for employees before she began work when the accident happened. *Tickles* at 637. The Court concluded that this incident constituted a "reasonably necessary action of personal convenience" in "preparation for her workday" that occurred within a reasonable period prior to the beginning of her shift. *Id.*

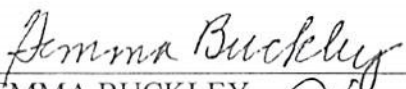
In the instant case we know that Claimant was paying rent when the accident occurred. More specifically she was paying rent on behalf of her fiancé and fell on her way out of the office. She testified that her intention was to return to her room and change into her work clothes and thereafter begin her work for the day. It should be noted that Mr. Patel disputes Claimant's timeline and testified that she normally starts her day much later after getting the job list from the office at nine o'clock. An example similar to Claimant's situation may be the *Hudson v. Boscov's* case. In that matter the claimant came in to pick up her paycheck on her day off and then stopped to shop on her way out when she was injured. The employer did not require her to come in on her time off and pick up her check. Following the *Spellman* analysis, the Board determined that Ms. Hudson was on her employer's premises for purely personal reasons not incident to her employment and denied the petition. *Hudson v. Boscov's*, No.: 1395398 (Del. I.A.B. July 17, 2013). Similarly Claimant here was on a personal errand not incidental to her employment, nor could one say that this was a task that was preparatory to her employment. She still had to return to her room and change for her shift. There was no connection between her rent and compensation for employment.

Moreover she was admittedly paying rent on behalf of her fiancé. Finally *Spellman* tasks the fact finder to determine whether the course and scope of employment question can be answered by the employment contract or relationship. *Spellman* at 625. Claimant essentially worked as the housekeeper, which was the position noted on her application for employment. Clearly paying rent was outside of the scope of the job duties for which she was hired and therefore the injuries occurred outside the course and scope of employment.

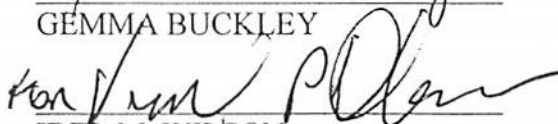
Consequently the Board grants the Motion and Claimant's Petition to Determine Compensation Due is dismissed with prejudice.

IT IS SO ORDERED this 7th day of November 2018.

INDUSTRIAL ACCIDENT BOARD




GEMMA BUCKLEY



IDEL M. WILSON

Mailed Date: 11-13-18



OWC Staff

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