THE COMMONWEALTH COURT OF PENNSYLVANIA REINS IN THE "PROVISION OF TRANSPORTATION" EXCEPTION TO THE "COMING AND GOING" RULE UNDER PENNSYLVANIA'S WORKERS' COMPENSATION ACT

by
Michael R. Libor, Esquire
Joseph P. Dever, Jr., Esquire
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-4936

The en banc panel of the Commonwealth Court of Pennsylvania, in Williams v. Workers' Compensation Appeal Board, No. 1578 C.D. 1997 (Pa. Commw. Ct. Dec. 11, 1998), recently clarified when an employee may receive benefits under Pennsylvania's Workers' Compensation Act ("Act"), 77 P.S. §§ 1 et seq., for an injury sustained while traveling to or from work. Generally, employees may not recover benefits for injuries sustained while traveling to or from work. This is known as the "coming and going" rule. The rule, however, does not apply where the employment contract includes transportation to and/or from work. In its decision, the Williams Court made clear that in order for an employee to avoid the "coming and going" rule so as to allow recovery under the Act, the travel allowance provided must be directly related to the expense or distance of the employee's particular commute.

The claimant in the case, Gerard Williams, was employed as an apprentice electrician by Matco Electric Company ("Matco"). Williams obtained the job through a referral from his local union. Under the applicable collective bargaining agreement ("CBA"), Williams received a specific hourly rate for his work. In addition, he received an extra 49 cents per hour ($3.92 per day) because the Matco job site was located outside of a specific territorial work zone defined under the CBA. Matco did not pay Williams

for his time and expenses commuting to and from work each day, other than the extra 49 cents per day.

Williams was involved in an automobile accident driving to work and suffered partial paralysis. He subsequently filed a claim petition seeking benefits under the Act. Matco denied the claim petition, but a Workers' Compensation Judge ("WCJ") granted Williams his benefits. The Workers' Compensation Appeal Board reversed the WCJ's decision, and Williams appealed to the Commonwealth Court, which heard his appeal en banc.

The sole issue before the Commonwealth Court was whether Williams' injuries fall within an exception to the "coming and going" rule. The threshold question for determining whether any claimant is entitled to benefits under the Act is whether the claimant suffered his or her injury while engaged in activity in furtherance of the employer's business. The rationale behind the "coming and going" rule is that an employee traveling to or from work is usually not furthering the business of the employer, but is merely arriving at or leaving the work site. There are, however, four exceptions to the "coming and going" rule. An injury sustained while traveling to or from work will be deemed compensable if: (1) the employment contract includes transportation to and/or from work; (2) the claimant has no fixed place of work; (3) the claimant is on special assignment for the employer; or (4) special circumstances are such that the claimant was furthering the business of the employer.

Williams contended that he was entitled to benefits under the first and fourth exceptions to the "coming and going" rule. With regard to the first exception (whether the CBA included transportation to and/or from work), the Williams Court looked to its prior, albeit conflicting, decisions on the issue,[1/] and concluded that Williams' case

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1/Kear v. Workmen's Compensation Appeal Bd., 517 A.2d 586 (Pa. Commw. Ct. 1986); Peer v. Workmen's Compensation Appeal Bd., 503 A.2d 1096 (Pa. Commw. Ct. 1986); (continued).(continued).(continued).

shared the "same material fact pattern" as those decisions -- that the claimants received some additional compensation from their employers based upon the location of their job sites or as a travel allowance, but the claimants were not directly compensated for their particular expenses for commuting to their job sites. Moreover, in each case the employers did not provide or control the means of transportation for the claimants. The Williams Court reasoned that the employers in those cases paid the additional compensation as an incentive to attract workers who might otherwise find the jobs undesirable because of a lengthy commute.

Noting a conflict between the prior decisions Peer and Bechtel on the one hand (which held that the above-described fact pattern fails to meet the first exception to the "coming and going" rule) and Kear on the other hand (which held that the above-described fact pattern meets the first exception), the Court clarified the issue by ruling as follows:

> We believe that Peer and Bechtel state the correct principle of law, i.e., that where travel allowances are not directly related to the expense or distance of the employee's commute, and where the employer does not provide or control the means of transportation used, the contract cannot be deemed to include transportation to and from work.

To the extent the Kear decision held to the contrary, it was overruled.

Accordingly, the Court held that because the CBA in Williams' case did not "obligate" Matco to provide Williams with transportation to work and because Matco did not provide the means of Williams' transportation to work, Williams failed to satisfy the first exception to the "coming and going" rule.

The Court then addressed Williams' argument that he was entitled to benefits under the fourth exception to the "coming and going" rule (the existence of special circumstances such that Williams was furthering the business of his employer). The

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and Bechtel Power Corp. v. Workmen's Compensation Appeal Bd., 648 A.2d 1266 (Pa. Commw. Ct. 1994).

Court rejected this argument, expressly pointing out that in order to meet the fourth exception, the "commute must involve an act in which the employe [sic] was engaged . . . by order of the employer, express or implied, and not simply for the convenience of the employe [sic]." The Court found that these circumstances were not present in Williams' case.

The majority's opinion was not without criticism from other members of the en banc panel, however. Judge Flaherty issued a strong, cogent dissent, in which Judge Smith joined. Unlike the majority, Judge Flaherty interpreted the first and fourth exceptions to the "coming and going" rule broadly, emphasizing all of the circumstances of Williams' travel, as well as the policy considerations involved in the case. Judge Flaherty criticized the majority for failing to expand its analysis beyond a mere examination of the nature of the travel allowance provided. Judge Flaherty stated that the proper analysis should include "all the circumstances of the travel, e.g., location, extent, risk, etc., of which payment is only one factor, especially considering whether the nature of the travel furthers the business interests of the employer." In addition, Judge Flaherty expressed concern that the majority's decision would allow employers to use the collective bargaining process to circumvent the legislative intent of the Act to avoid compensating employees for injuries sustained while furthering the employer's business. This could be achieved, Judge Flaherty reasoned, by drafting a CBA to provide for a general or a fixed travel allowance, as opposed to direct payments or reimbursement for an employee's particular travel.

The Court's decision in Williams offers a bright-line test for determining whether an employer's provision of a travel allowance to an employee will trigger an exception to the "coming and going" rule. After Williams, it appears that an employer's provision of a general or a fixed travel allowance, not directly related to an employee's particular travel, will fail to meet an exception to the rule, thus leaving the injured employee without workers' compensation benefits. To the extent the Williams decision may be criticized for allowing employers to circumvent the legislative intent of the Act, as the dissent in Williams argued, organized labor may attempt to prevent such a result by confronting the issue head-on at the bargaining table by negotiating for travel allowances "directly related" to the expense or distance of an employee's particular commute.