IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Diane Canning, Petitioner	:	
v.	:	No. 985 C.D. 2014
	:	Submitted: November 14, 2014
Workers' Compensation Appeal Board (Pennsylvania Senate), Respondent	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON **FILED: January 9, 2015**

Diane Canning (Claimant) petitions for review from an order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of a Workers' Compensation Judge (WCJ) denying Claimant's claim petition. The WCJ denied benefits because Claimant did not sustain her injuries within the scope of her employment under Section 301(c) of the Workers' Compensation Act (Act).[1] The Board affirmed, agreeing Claimant was not furthering her employer's interest. Discerning no error below, we affirm.

I. Background

On the date of her injury, Claimant was employed by the Pennsylvania Senate (Employer) as a receptionist for Senator Michael Stack (Senator). The incident underlying the workers' compensation claim occurred

[1] Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §411(c).

while she was at a Christmas party that a friend of the Senator hosted in Philadelphia. The party was held off-site and was open to the Senator's entire staff. When leaving the party, Claimant fell down the front steps, sustaining the following injuries: right wrist fracture; injury to her right hand; laceration of her right eye; cerebral contusion; post-concussive syndrome; cervical strain on degenerative disc disease; cervical radiculopathy; and, headaches. After taking a few days off to recover from the incident, Claimant returned to work. Months later, Claimant was laid off. Claimant notified Employer of her alleged work injuries.

Claimant filed a claim petition, alleging she sustained work-related injuries resulting in ongoing disability; she last worked in May 2011 when laid off by Employer. She also filed a penalty petition.[2] In its answer, Employer alleged that Claimant's injuries were not work related.

The WCJ held a hearing where Claimant testified on her own behalf, and presented the medical testimony of her treating physician. Cynthia Marelia, who managed Claimant (Manager), testified for Employer. The WCJ found Manager credible. In the event of a conflict between the testimony of Claimant and that of Manager, the WCJ credited Manager. Because of his conclusions of law, the WCJ did not make credibility determinations regarding the medical evidence.

[2] Claimant sought penalties for Employer's alleged untimely filing of its Notice of Compensation Denial, which is dated after the date Claimant filed her claim petition. However, Claimant did not raise the denial of her penalty petition on appeal.

Based on the credited evidence, the WCJ made the following findings regarding the party. Although the entire staff was invited, attendance at the party was optional. WCJ Op., 11/14/2012, Finding of Fact (F.F.) No. 5d. Specifically, the WCJ found "[t]here were no restrictions or provisions that were placed on the employees for attending the party." Id. Manager announced the party to staff. Employees had to use comp time or vacation time to attend the party. Employees who did not use their own time had to work. Claimant used her vacation time to attend the party. Id.

Manager also testified Claimant was not proficient in her job and had no computer skills. F.F. No. 5a. When budgetary constraints forced layoffs, Claimant was one of three employees laid off. F.F. No. 5b. The decision to lay Claimant off was based on her performance. F.F. No. 5c.

Notably, there was no evidence presented regarding the purpose of the party, or Employer's sponsorship of or any encouragement to attend the event. The WCJ found that a friend of the Senator hosted and planned the party. Id.

Ultimately, the WCJ denied benefits, determining Claimant did not meet her burden of proving she sustained her injury in the scope of her employment, or that her injury was sustained furthering Employer's business. See WCJ Op., Concl. of Law No. 1. Claimant appealed the denial of her claim petition to the Board.

The Board affirmed, concluding Claimant did not meet her burden of proving that her injury arose in the course of employment. Applying this Court's decision in Pinn v. Workers' Compensation Appeal Board (Hemlock Girl Scout Council), 754 A.2d 40 (Pa. Cmwlth. 2000), the Board reasoned "no evidence was presented that the purpose of the party was to promote Employer's interest in good relationships with its employees or that attending the party was necessary to maintain the skills required by Claimant's job." Bd. Op., 5/13/14, at 4.

Claimant now petitions for review.[3]

II. Discussion

For an injury to be compensable under the Act, it must arise in the course of employment. 77 P.S. §411(c); Krawchuk v. Phila. Elec. Co., 439 A.2d 627 (Pa. 1981); Workmen's Comp. Appeal Bd. (Slaugenhaupt) v. U.S. Steel Corp., 376 A.2d 271 (Pa. Cmwlth. 1977). Claimant bears the burden of proving the necessary elements for her claim. Marazas v. Workers' Comp. Appeal Bd. (Vitas Healthcare Corp.), 97 A.3d 854 (Pa. Cmwlth. 2014).

Claimant assigns legal error to the conclusion that she was not within the course and scope of employment at the time of her injury. She contends that attending the holiday party furthered Employer's interest because such a social event is designed to foster morale.

[3] As the issue raised on appeal is limited to the scope of employment, our review is limited to a determination of whether an error of law occurred. Pinn v. Workers' Comp. Appeal Bd. (Hemlock Girl Scout Council), 754 A.2d 40 (Pa. Cmwlth. 2000).

Employer counters that because Claimant was not at work, nor performing a task furthering Employer's interests, she was not within the scope of employment. As a result, her injuries are non-compensable.

The phrase "arising in the course of employment" in Section 301(c)(1) of the Act is construed to include injuries sustained in furtherance of the business or affairs of the employer, as well as certain other injuries that occur on premises occupied or controlled by the employer. Hoffman v. Workers' Comp. Appeal Bd. (Westmoreland Hosp.), 741 A.2d 1286, 1287 (Pa. 1999). Off-premises injuries, such as those sustained by Claimant, "are only compensable if, at the time of the injury, the employee is actually engaged in the furtherance of the employer's business activities." Brown v. Workmen's Comp. Appeal Bd. (Liken Employment Nursing Servs.), 588 A.2d 1014, 1016 (Pa. Cmwlth. 1991) (emphasis added) (attendance at company Christmas party was not within scope of employment). Whether an employee is actually furthering an employer's business activity when she sustained injury is a question of law based on the facts found by the WCJ. Storms v. Workers' Comp. Appeal Bd. (Big Boulder/Jack Frost), 782 A.2d 20 (Pa. Cmwlth. 2001) (injuries sustained while traveling to company picnic were not in scope of employment and not compensable).

Moreover, as factfinder, the WCJ "has exclusive province over questions of credibility and evidentiary weight" and "is free to accept or reject the testimony of any witness ... in whole or in part." Greenwich Collieries v. Workmen's Comp. Appeal Bd. (Buck), 664 A.2d 703, 706 (Pa. Cmwlth. 1995). This Court may overturn a "credibility determination only if it is arbitrary and

capricious or so fundamentally dependent on a misapprehension of facts, or so otherwise flawed, as to render it irrational." Casne v. Workers' Comp. Appeal Bd. (STAT Couriers, Inc.), 962 A.2d 14, 19 (Pa. Cmwlth. 2008).

In analyzing the element "furthering the interest of the employer," this Court emphasizes the claimant's purpose or activities during the time of injury. Marazas. Additionally, we review the evidence in a light most favorable to the party who prevailed before the factfinder, the WCJ. Sell v. Workers' Comp. Appeal Bd. (LNP Eng'g), 771 A.2d 1246 (Pa. 2001); Waldameer Park, Inc. v. Workers' Comp. Appeal Bd. (Morrison), 819 A.2d 164 (Pa. Cmwlth. 2003). Further, we draw all reasonable inferences deducible from the evidence in support of the factfinder's decision in the prevailing party's favor. Id. In this case, Employer prevailed before the WCJ.

Claimant contends that attending the holiday party furthered an interest of Employer, specifically that it "was designed to foster morale and good relations among the employees." Petitioner's Br. at 7. In support, Claimant asserts the party was held on an annual basis and the entire staff was invited.

We note that Claimant's assertions regarding the purpose of the party, and its alleged role in promoting Employer's interest by building morale, are pure conjecture. There are no findings in that regard. Nor did Claimant present any evidence regarding the purpose, or that Employer promoted attending the party. Claimant testified that she wanted to go to the party and attended because "that [was] something that she wanted to do." F.F. No. 2a.

Here, the WCJ credited the testimony of Manager over that presented by Claimant where there was a conflict. Claimant draws our attention to no evidence that attendance at the holiday party was mandatory. The WCJ found Claimant's attendance at the party was voluntary. F.F. No. 5d. Further, the WCJ made no findings that attendance at the holiday party was encouraged by Employer. As a result, he concluded Claimant's attendance at the party did not further Employer's business or interests. Based on our precedent, we agree.

To that end, in cases where the factfinder did not make a specific finding that the purpose of a social event was to foster morale, or otherwise further an employer's interests, we concluded that injuries at or following social events are not within the scope of employment. See, e.g., Pinn (claimant not entitled to benefits for injuries sustained while attending bridal shower where there was no evidence that employer encouraged bridal shower to promote good relations among employees, provided food for shower or encouraged claimant to attend); Brown, 588 A.2d at 1016 (upholding denial of compensation where employee "wanted to go" to holiday party as attendance was not necessary for job or mandatory).

On the other hand, this Court affirmed the grant of benefits for an injury sustained at an employer-sponsored social event when there were findings that the purpose was to further an employer's business. See Tredyffrin-Easttown Sch. Dist. v. Breyer, 408 A.2d 1194 (Pa. Cmwlth. 1979) (affirming grant of benefits for track coach's loss of eye when struck at team picnic; picnic was for graduating seniors and purpose was to discuss track and students' futures); Feaster v. S.K. Kelso & Sons, 347 A.2d 521 (Pa. Cmwlth. 1975) (affirming grant of

benefits for fatal injury sustained at company picnic as purpose of picnic was to promote good relationships among employees; employees were not paid for attending picnic and employer supplied the food).

This Court set forth the factors to assess in considering whether an injury at a social event furthers the interests of an employer in Pinn. There, the claimant alleged she became completely disabled as a result of injuries she sustained from falling at a bridal shower held in the basement of employer's building on her lunch break. The WCJ granted the claimant's claim petition, finding she proved she was in the scope of employment at the time of injury. The Board reversed, concluding that aside from providing a venue, the employer played no role in the shower and there was no indication the claimant was furthering the employer's interests when she fell.

This Court affirmed the Board. After reviewing a number of cases involving the compensability of injuries sustained at employer-sponsored social events, we reasoned that a number of factors bore emphasis. First, we noted the importance of evidence demonstrating the employer's encouragement to attend the activity at issue. Second, our precedent reflected an emphasis on a finding by the WCJ that the activity furthered a specified interest of the employer. Lastly, in Pinn we recognized that our cases favored compensating such injuries when the injury occurred during an activity necessary to maintain the skills required by the employee's job.

Review of the findings here reveals that Claimant does not meet any of these factors. Specifically, the WCJ found Claimant's attendance at the holiday party was voluntary. There is no evidence that Employer promoted attendance at the party, or that the purpose of the party was to improve morale. Significantly, the WCJ made no specific finding that the purpose of the party was to further Employer's interests. Also, Claimant's attendance at the party was not necessary to maintain her skills as a receptionist. Cf. Mann v. City of Phila., 563 A.2d 1284 (Pa. Cmwlth 1989) (affirming grant of benefits to lifeguard who drowned while swimming in employer's pool, as swimming was encouraged by employer and was a skill necessary to being a lifeguard).

As in Pinn, "there is no evidence that … social events, if held, were designed to promote good relations among the employees or that claimant was injured while engaging in an activity or maintaining a skill necessary to the performance of her job." Pinn, 754 A.2d at 44. The Board thus properly applied the Pinn factors here. Consequently, we agree with the conclusion of the Board and the WCJ that Claimant did not show that she was furthering the interests of Employer at the time of her injury.

Moreover, regardless of whether the event was designed to foster morale, Claimant was not at the event when she sustained her injuries. Rather, like the claimant in Brown, she was in the act of leaving the party.[4] Thus, the WCJ did

[4] The "coming and going" rule is inapplicable to injuries sustained by an employee traveling to or from an employer-sponsored social event. See Storms v. Workers' Comp. Appeal Bd. (Big Boulder/Jack Frost), 782 A.2d 20 (Pa. Cmwlth. 2001); Brown v. Workmen's Comp.
(Footnote continued on next page…)

not err in concluding that Claimant did not prove she was actually furthering the interests of Employer at the time of her injury.

Applying this Court's precedent to the WCJ's findings here, the WCJ and the Board properly concluded Claimant was not furthering Employer's interests at the time she sustained her injuries.

III. Conclusion

For the foregoing reasons, the order of the Board affirming the WCJ's denial of benefits is affirmed.

ROBERT SIMPSON, Judge

(continued…)

Appeal Bd. (Liken Employment Nursing Servs.), 588 A.2d 1014 (Pa. Cmwlth. 1991). Moreover, Claimant does not assert she was coming or going from work or otherwise implicate the rule.

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O R D E R

AND NOW, this 9th day of January, 2015, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge