STATE OF MICHIGAN

COURT OF APPEALS

CONNIE M. CAMBURN,

Plaintiff,

and

AUTO CLUB OF MICHIGAN,

Intervening Plaintiff-Appellant,

v

NORTHWEST SCHOOL DISTRICT, a/k/a JACKSON COMMUNITY SCHOOLS,

Defendant-Appellee.

FOR PUBLICATION
December 6, 1996
9:05 a.m.

No. 191268
WCAC No. 93-000916

Before: Fitzgerald, P.J., and Cavanagh and N.J.Lambros,* JJ.

PER CURIAM.

Intervening plaintiff Auto Club of Michigan appeals the October 21, 1994, order of the Worker's Compensation Appellate Commission (WCAC), which affirmed the magistrate's decision that intervenor was not entitled to reimbursement from defendant's worker's compensation insurance carrier because plaintiff's injury did not arise out of and during the course of her employment. We affirm.

I.

Plaintiff teaches for defendant school district. Plaintiff was injured in an automobile accident in October 1989 when she ran a stop sign on her way to a seminar sponsored by the intermediate school district. She sustained injuries which kept her away from work for the balance of the school year. Plaintiff's no-fault insurance carrier, intervenor Auto Club, paid her wage-loss benefits, reimbursed mileage relating to the accident, and covered her medical bills.

* Circuit judge, sitting on the Court of Appeals by assignment.

Auto Club filed a petition for hearing seeking reimbursement from the school district or its insurer, claiming that plaintiff's injuries arose out of and in the course of her employment within the meaning of the Worker's Disability Compensation Act, MCL 418.101 *et seq.*; MSA 17.237(101) *et seq*. At the hearing before the magistrate, plaintiff testified that the seminar was on cooperative learning and lasted three days, for which she was given paid leave by defendant. She testified that she intended to use what she learned for small group problem-solving, especially for elementary math classes. She testified that she wished to attend the seminar because she had heard other teachers discuss it favorably. Although plaintiff agreed that she was not required to attend the seminar, she testified that she felt her superiors expected teachers to engage in continuing education, and that continuing education was a topic that came up during evaluations. Plaintiff testified that the seminar was held at the intermediate school district office, which was closer to plaintiff's home than the school at which she taught, although getting there required a different route. However, plaintiff never attended the seminar because the accident occurred on her way to the first session.

Plaintiff's immediate supervisor, principal Robert Badertscher, testified that attendance at seminars was not required of teachers.. He did not request that plaintiff attend the seminar, and did not encourage her to do so any more than he encouraged his teachers generally to avail themselves of such opportunities. He explained that the intermediate school district provided such seminars without cost to teachers in the county, and so neither plaintiff nor defendant paid for the privilege of plaintiff's attendance. He estimated that approximately one-third of the teachers at his school had attended such seminars. Although he testified that attending such seminars did not provide any tangible benefit to the school or the school district, he conceded that a teacher's participation in seminars might benefit the teacher's students. He also conceded that attending seminars would be noted in a teacher's evaluation.

The magistrate denied Auto Club's request for reimbursement, finding that plaintiff's injuries did not arise out of and in the course of her employment. Auto Club appealed, and in an opinion and order dated October 21, 1994, the WCAC affirmed. The WCAC held that the magistrate properly based her analysis on this Court's opinion in *Marcotte v Tamarack City Volunteer Fire Dep't*, 120 Mich App 671; 327 NW2d 325 (1982), which quoted with approval from Professor Larson's treatise on worker's compensation law and summarized the rule as follows:

> The general rule set forth in Larson's treatise and applied by the WCAB [Worker's Compensation Appeal Board] consists of a two-part test: (1) was the employer directly benefited by the employee's attendance; and (2) was attendance compulsory or at least definitely urged or expected as opposed to merely encouraged? This rule appears to be consistent with Michigan law.

The WCAC found that the magistrate properly applied *Marcotte* in this case:

> In the instant case, the magistrate as factfinder determined that the employer (school district) was not directly benefited by the employee's attendance at the seminar, based on the testimony of Principal Badertscher, who stated that although the students might benefit from plaintiff's attendance, the school would

not. (Note again the Larson statement that "[i]t is not enough that the employer would benefit indirectly through the employee's increased knowledge.") The magistrate also found, based upon Mr. Badertscher's testimony, that plaintiff's attendance was not compulsory or at least definitely urged or expected, since he stated that he did not require attendance, he did not urge attendance, and that the only reason he asked plaintiff if she was interested in attending the seminar was because of his desire that "all employees be the best they could be."

The magistrate's findings are supported by competent, material and substantial evidence on the whole record. MCL 418.861a(3). Consequently, based on those findings, the standard established in *Marcotte, supra* operates to establish that plaintiff's attendance at the seminar was not an incident of employment. This conclusion is dispositive and requires the denial of plaintiff's claim.

The WCAC also affirmed the magistrate's alternative analysis, that even if attendance at the seminar had been an incident of employment, plaintiff would still not be entitled to benefits because of the general rule that travel to and from work is not compensable, and because plaintiff fit none of the exceptions to that rule.

Stark [v *L E Myers Co*, 58 Mich App 439, 443; 228 NW2d 411 (1973)] established four tests, and the magistrate found that none of these tests had been met by plaintiff. As to the first test, the magistrate found, and it was undisputed, that the employer did not pay for or furnish the employee's transportation. As to the second test, the magistrate found, and it was undisputed, that plaintiff's working hours would have begun when and if she had arrived at the seminar, and therefore the injury did not occur during or between working hours. As to the third test, the magistrate found that the employer did not derive a special benefit from the employee's activity at the time of the injury (the fact that plaintiff was in the process of driving). As to the last test, the magistrate found that plaintiff was not subjected to excessive exposure to traffic risks, because the seminar was being held at a site closer to plaintiff's home than her normal school building.

This Court denied Auto Club's application for leave to appeal. Auto Club applied to the Supreme Court for leave to appeal. In lieu of granting leave, the Supreme Court remanded to this Court for consideration as on leave granted.

II

The WCAC must consider the magistrate's findings of fact conclusive if they are supported by competent, material, and substantial evidence on the whole record. Substantial evidence is evidence that a reasonable person would accept as adequate to justify a conclusion. This Court's review of a decision by the WCAC is limited. In the absence of fraud, findings of fact made by the WCAC acting within its powers shall be conclusive. This Court may review questions of law

involved with any final order of the WCAC. MCL 418.861a(3) & (14); MSA 17.237(861a), *Holden v Ford Motor Co*, 439 Mich 257; 484 NW2d 227 (1992).

In *Marcotte*, *supra* at 677, this Court quoted with approval from §27.31(c) of Professor Larson's treatise:

> As to the attending of conventions, institutes, seminars, and trade expositions, compensability similarly turns on whether claimant's contract of employment contemplated attendance as an incident of his work. It is not enough that the employer would benefit indirectly through the employee's increased knowledge and experience.
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> * * *
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> Employment connection may be supplied by varying degrees of employer encouragement or direction. The clearest case for coverage is that of a teacher who is directed to attend a teacher's institute. It is also sufficient if attendance, although not compulsory, is "definitely urged" or "expected" but not if it is merely "encouraged." Connection with the employment may also be bolstered by the showing of a specific employer benefit, as distinguished from a vague and general benefit, as when the attendance of an automobile mechanic at an examination given by the manufacturer permitted the dealer to advertise "factory-trained mechanic."

We note that in §27.31(a) Professor Larson summarizes a similar rule in cases when an employee is injured while undertaking educational or training programs to enhance his or her own work proficiency.

We agree with the WCAC that the magistrate properly applied the law to the facts as found. Even if defendant was directly benefited by plaintiff's intent to attend the seminar, substantial evidence supports the magistrate's conclusion that attendance was neither compulsory nor definitely urged or expected. Instead, it was merely encouraged, and as such was not an incident of employment. Therefore, plaintiff's injury did not arise out of and the course of her employment.

We also agree that the magistrate properly denied Auto Club's petition based on her alternative analysis. The general rule is that injuries occurring while traveling to or coming from work are not compensable. However, a number of exceptions have been recognized where (1) the employee is on a special mission for the employer; (2) the employer derives a special benefit from the employee's activity at the time of the injury; (3) the employer paid for or furnished the employee transportation as part of the contract of employment; (4) the travel comprised a dual purpose combining the employment-required business needs with the personal activity of the employee; (5) the employment subjected the employee "to excessive exposure to the common risk," such as traffic risks faced by a truck driver on the way to his rig; and (6) the travel took place as the result of a split shift working schedule or employment requiring a similar irregular nonfixed working schedule. *Bush v Parmenter*, 413 Mich 444, 452 n 6; 320 NW2d 858 (1982).

Although defendant argues that plaintiff was on a special mission for her employer, the magistrate's findings support a contrary conclusion. The magistrate found defendant was not directly benefited by plaintiff's attendance at the seminar, and that the attendance was neither compulsory nor definitely expected. Moreover, even if plaintiff's attendance at the seminar had been an incident of employment, her injury on the way to the seminar would not be compensable. In *Bush, supra* at 452, the Supreme Court quoted with approval the following from Professor Larson's treatise:

> When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself

In the instant case, plaintiff's off-premises journey was not an integral portion of the "special mission" she is assumed to be on for purposes of this alternative argument. Plaintiff testified that the trip to the seminar was approximately the same length as the trip to her normal work site, albeit over a different route. Therefore, even if plaintiff's attendance at the seminar is considered to be the functional equivalent of being at work, plaintiff's injury occurred while she was on the way to work and so is not compensable.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros