

Workers' Comp Appropriate for On-Call Health Care Worker Injured on Way Home, Tennessee Court Finds

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An on-call surgical technician injured while driving home after assisting with an emergency surgery at a hospital was eligible for workers' compensation benefits, the Supreme Court of Tennessee has decided. *Shannon v. Roane Med. Ctr., Tenn.*, No. E2011-02649-WC-R3-WC (Mar. 13, 2013). The Special Workers' Compensation Appeals Panel of the Court determined the evidence established that the employee falls within an exception to the rule under the Tennessee Workers' Compensation Act that bars compensation when the employee is injured while going to or from work.

Background

Tina Shannon was a surgical technician employed by the Roane Medical Center in Harriman, Tennessee. She worked a regular schedule from 7:00 a.m. to 3:00 p.m., Monday through Friday, and on-call shifts on a rotating basis. On April 19, 2010, Shannon, while still on call as she returned home after assisting with emergency surgery, was injured in an automobile accident when another driver crossed over the center line into the path of her vehicle. She missed 37 weeks of work.

Shannon filed suit seeking workers' compensation benefits. The employer denied compensability, maintaining that Shannon was not injured in the course and scope of her employment. The trial court found in favor of the employer and denied benefits, holding that an injury sustained while traveling to or from a place of employment was not compensable, despite the on-call status of the employee. Shannon appealed to the Supreme Court. (Workers' compensation cases in Tennessee are appealed directly to the state Supreme Court.)

Tennessee Law

Under Tennessee's Workers' Compensation Act, in order for a workers' compensation claim to be compensable, the employee's injury giving rise to the claim must arise out of and occur in the "course of employment." The general rule is that an employee is not acting within the course of employment when he or she is going to or from work ("coming and going rule"), unless the injury occurs on the employer's premises. This general rule bars awarding workers' compensation on the basis that the primary benefit of a commute is typically to the employee, not the employer. Further, the law is liberally construed in favor of compensation, and any reasonable doubts should be resolved in the employee's favor.

Case-by-Case, Totality of the Circumstances

On appeal, the state Supreme Court ruled that courts should consider the totality of the circumstances in determining whether the "coming and going rule" applies to an on-call employee. Factors to consider, the Court instructed, include the following:

- (1) Whether the employee is paid for time spent on call, either in the form of an hourly wage or increased annual salary;

- (2) The nature of any restrictions imposed by the employer during the employee's on-call hours;
- (3) The extent to which the employer benefits from the on-call system; and
- (4) The extent to which the on-call system requires additional travel that subjects the employee to increased risk compared to an ordinary commuter.

Looking at the totality of the circumstances in this case, the Court found that Shannon satisfied the key elements for the exception to the "coming and going rule." It found:

- (1) Shannon was paid an hourly wage of \$2 per hour for time spent on call, but not on duty;
- (2) She was subject to restrictions, including being available by telephone or by pager at all times during her on-call shift, staying within 30 minutes' travel time to the emergency room, refraining from using alcohol or drugs, and otherwise remaining alert and able to perform the responsibilities of her job;
- (3) Evidence showed that the employer benefitted from the on-call system as it was able to operate on a round-the-clock basis without incurring the expense of full staffing; and
- (4) Shannon made more trips to and from work due to being on-call, thereby incurring greater risk than otherwise.

Based on these circumstances, the Court reversed the trial court's judgment and remanded the case for an award of benefits.

* * *

While clarifying the exception to the "coming and going rule," this decision does not create a categorical granting of workers' compensation benefits to on-call employees under Tennessee law. However, it may expand coverage to those not previously entitled to workers' compensation for injuries.

If you have any questions about this decision or other workplace developments, please contact James Mulroy, at (901) 462-2600 or MulroyJ@jacksonlewis.com, or the Jackson Lewis attorney with whom you regularly work.

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