

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN
Commissioner

June 11, 2019

TOBY REDLEAF v. W&L MAIL SERVICE INC
CINCINNATI INS CO (THE), Insurance Carrier
THE CINCINNATI INSURANCE CO, Claim Administrator
Jurisdiction Claim No. VA00001513936
Claim Administrator File No. 3196526 TC
Date of Injury: September 7, 2018

Toby Redleaf
Claimant, pro se.

Daniel E. Lynch, Esquire
For the Defendants.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

The defendants requested review of the Deputy Commissioner's March 1, 2019 Opinion finding the claimant sustained an injury by accident that arose out of and in the course of his employment. We AFFIRM.

I. Material Proceedings

The claimant filed a claim on October 19, 2018, alleging an injury by accident to his left ankle on September 7, 2018. He sought an award of medical benefits and temporary total disability from September 8, 2018 through December 2, 2018. Pertinent to this review, the defendants asserted the accident did not arise out of and in the course of the employment.

The Deputy Commissioner held the claimant proved his injury arose in the course of and out of his employment and awarded the requested medical and wage loss benefits.

The defendants filed a timely request for review.

II. Findings of Fact and Rulings of Law

The claimant worked for the employer bulk mailing service as a delivery driver. His job involved taking mail from the processing and distribution plant in Norfolk to different post offices in Chesapeake loading and unloading the truck. On September 7, 2018, he drove to the Great Bridge post office, arriving around 6:50 a.m. He backed his truck up into the loading dock. When he got out of his truck, he noticed wasps flying around above the stairs, and there was a large wasp nest in the area above the stairs. The claimant asked the post office's maintenance man, George Delbridge, to take care of the nest because he did not want to get stung. Delbridge sprayed the nest, and the spray ran down the walls onto the ground. Delbridge went back into the building to get a broom to knock down the nest. Because Delbridge was too short to reach the nest, he asked the claimant to knock down the nest for him. The claimant testified: "I took the broom handle and stood directly underneath the wasp nest and just jumped up" in a lay-up movement. (Tr. 5.) When he landed, he slipped on a substance that he believed was the wasp spray. He felt a snap and pain. He went to the hospital where he was diagnosed with a left ankle fracture for which he underwent surgery.

The claimant testified that at the time he removed the nest, he believed all of the wasps were dead as he would not have attempted to knock down the nest if it had contained live wasps. The claimant agreed that he was "not expected" to take care of the wasp nest as part of his job. He did it "just to help the post office out." (Tr. 10.) He agreed he was "essentially helping out Mr. Delbridge to do his job." (Tr. 12.) The claimant explained that Delbridge "helps me unload my truck sometimes so I just offered to help him because he asked me if I was tall enough to knock it

down so I just obliged.” (Tr. 15.) He said he did not believe his employer would have wanted him to knock down the nest, but he was “not sure what the actual scope of my job would be considering it was on the loading dock where I work.” (Tr. 12.) The benefit to him would be knowing there would not be any more wasps flying into the nest for him or other drivers.

In finding the claimant’s injury arose out of the employment, the Deputy Commissioner found the claimant’s attempt to reach the wasp nest by jumping, combined with the substance on which he landed, were conditions of his work place that caused his injury. (Op. 3.) The Deputy Commissioner then considered whether the injury arose in the course of the employment. He held:

After a careful consideration of all of the facts presented, it is found that this incident also occurred in the course of Redleaf’s employment. Redleaf acknowledged that his employer probably would not have expected that he would help the maintenance worker knock down the wasp’s nest once the insects were exterminated. Nevertheless, this incident occurred as part of Redleaf’s request that the worker destroy the nest so that he could perform his work delivering bulk mail. While Redleaf conceded that by the time the worker requested his assistance, the wasps around the nest were dead and no longer posed a danger to the completion of his work, his efforts to dislodge the nest are found to arise from Redleaf’s desire to accommodate the maintenance worker who had on previous occasions assisted him in completing his deliveries. Redleaf’s decision to assist this worker is considered an effort to maintain a good working relationship with a person employed by another employer but whose previous efforts had worked in furtherance of the employer’s efforts to fulfill the terms of its contract with the Service. Redleaf’s injury suffered in connection with this effort is thus found to have occurred within the course of his employment.

(Op. 3-4.)

The defendants argue that the claimant’s voluntary act of knocking down the wasp nest, where the wasps were already dead, did not arise out of his employment because at the time the claimant jumped up with the broomstick to knock down the wasp’s nest, there was no benefit to

him or the employer. Thus, his voluntary act was outside the requirements of his job and not in furtherance of the employer's interest when the injury occurred.

“The phrase arising ‘in the course of’ refers to the time, place, and circumstances under which the accident occurred.” Combs v. Va. Elec. & Power Co., 259 Va. 503, 511, 525 S.E.2d 278, 283 (2000) (quoting Cnty. of Chesterfield v. Johnson, 237 Va. 180, 183, 376 S.E.2d 73, 74 (1989)). “An accident occurs ‘in the course of the employment’ when it takes place within the period of the employment, at a place where the employee may reasonably be, and while he is reasonably fulfilling duties of his employment or engaged in doing something incidental thereto.” Id. (quoting Bradshaw v. Aronovitch, 170 Va. 329, 335, 196 S.E. 684, 686 (1938)).

In Lucas v. Lucas, 212 Va. 561, 186 S.E.2d 63 (1972), the Supreme Court of Virginia explained:

The phrase “arising out of and in the course of the employment” covers those accidents which cause injury to an employee while he is discharging some duty he is authorized to perform in furtherance of his employer's business, either directly or indirectly. Cohen v. Cohen's Department Store, 171 Va. 106, 110, 198 S.E. 476, 477 (1938).

In Sneider, on Workmen's Compensation, Vol. 7, § 1662(a), page 264, it is said:

If the voluntary act of an employee which causes an injury is sufficiently related to what the employee is required to do in fulfilling his contract of service, or is one in which someone in a like capacity may or must do in the interest of his employer's business, the fact that the employee was not actually required to perform the act will not impair his right to recover compensation.

To bar an employee from the protection of Workmen's Compensation benefits because he voluntarily acted in his employer's interest would be to discourage constructive initiative, which is not a desirable result.

Lucas, 212 Va. at 563-64, 186 S.E.2d at 65.

Here, while the claimant may not have been not required as part of his job to knock down a wasp nest, he was at a place he was reasonably expected to be performing an act that would benefit the employer. The claimant was required to load and unload his truck on this loading dock. The wasp nest interfered with the performance of these duties. After Delbridge sprayed the nest, the claimant explained that removing the nest would insure there would not be any more wasps flying into the nest for him or other drivers. Moreover, he explained that Delbridge often helped him unload the truck, and he was furthering that relationship by lending a hand in removing the nest. Thus, the claimant's actions benefitted the employer in two ways, insuring the nest was no longer a threat and in maintaining a working relationship with the post office. Under these circumstances, the claimant's injuries occurred in the course of his employment and arose from a risk of his employment. Accordingly, the Deputy Commissioner did not err in finding the claimant met his burden of proof.

III. Conclusion

The Deputy Commissioner's March 1, 2019 Opinion is AFFIRMED.

Interest is payable on the award pursuant to Virginia Code 65.2-707.

This matter is hereby removed from the review docket.

APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within 30 days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.