

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

COMPENSATION REVIEW BOARD

**CRB No. 16-008**

**TERESA BRODY,  
Claimant-Respondent,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,  
Self-Insured Employer-Petitioner,**

Appeal from a December 21, 2015 Compensation Order  
by Administrative Law Judge Gregory P. Lambert  
AHD No. 15-356, OWC Nos. 725256

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 JUN 14 PM 1 11

(Decided June 14, 2016)

Daniel P. Moloney for Claimant  
Sarah O. Rollman for Employer

Before LINDA F. JORY and HEATHER C. LESLIE and JEFFREY P. RUSSELL, *Administrative Appeals Judges.*

LINDA F. JORY for the Compensation Review Board.

**DECISION AND REMAND ORDER**

FACTS OF RECORD AND PROCEDURAL HISTORY

Teresa Brody (Claimant) worked for Washington Metropolitan Area Transit Authority (Employer) as a Station Manager. On February 12, 2015, Claimant sustained injury when she tripped over a metal grate while re-entering the Columbia Heights Metro station.

On November 17, 2015, Claimant presented her claim for benefits to an Administrative Law Judge (ALJ) in the Administrative Hearings Division (AHD) in the District of Columbia Department of Employment Services (DOES).

On December 21, 2015, the ALJ issued a Compensation Order (CO) granting the claim for benefits.

Employer filed Self-Insured Employer's Application for Review and memorandum in support thereof (Employer's Brief), with the Compensation Review Board (CRB), seeking reversal of the CO. Claimant filed a Memorandum in Opposition to Employer's Application for Review (Claimant's Brief) opposing Employer's appeal.

Because the CO's determination that Claimant's injury arose out of and in the course of her employment is not in accordance with the law, it is vacated.

#### ANALYSIS

In the CO, the ALJ made the following findings of fact.

The parties stipulated that there was an employee-employer relationship; jurisdiction is proper; the date of injury or onset is February 12, 2015; the average weekly wage is \$1404.31; the claim is timely; and there was timely notice of injury. Neither medical-causal relationship nor the nature and extent of the disability, if any, were disputed. HT at 7:5-9, 120:15-11:3. There is no dispute to the period of temporary total disability or medical expenses that are claimed.

A credible witness, Ms. Brody worked as a station manager for WMATA. Her job duties included assisting patrons with fare media and providing them with directions. She wears a uniform at work. When she is in uniform, she answers questions posed to her, even if not at her station or during her scheduled working hours.

On February 12, 2015, she was assigned to work at Metro Center for two shifts; once in the morning until 10:00 a.m. and again beginning at 1:00 p.m. Commonly called split shifts, Metro employees refer to schedules like this as "swing shifts." Employees are free to go where they like during their swing time. They may, for example, run errands, go home or meet with administrators at their child's school.

During her swing time Ms. Brody used her WMATA-supplied pass, which granted her free passage across the Metro system to travel to Columbia Heights Metro for lunch. Following her meal, she injured herself around 11:30 a.m. after tripping over a metal grate when re-entering the Columbia Heights station. Afterward, she returned to Metro Center but found that she could not work.

Ms. Brody was paid for around forty minutes of the time that she spent between shifts on the day in question. No evidence was submitted to address why she received this money.

CO at 2.

Based upon these facts, all of which are supported by substantial evidence and none of which are challenged by either party in this appeal, the ALJ concluded Claimant's accidental injury arose out of and in the course of her employment.

In support of Employer's argument that Claimant's injury did not arise out of an in the course of her employment, Employer asserts:

In order to be compensable, an accident must both arise out of and occur in the course of employment. An accident arises out of employment where the obligations or conditions of employment expose the employee to the risks or dangers connected with the injury. An injury occurs in the course of employment when it takes place within the period of employment at a place where the employee may reasonably be expected to be, and while he is reasonably fulfilling duties of his employment or doing something reasonably incidental thereto. In the present case, Claimant's injury does not meet either prong of the test.

Whether an injury occurs in the course of employment depends on the time, place and circumstances under which the injury occurred. Here, Claimant was on break at the time of the injury, rather than in a period of employment. The injury occurred at Columbia Heights. Claimant's employment was at Metro Center and all of her duties were performed at this location. Claimant had no employment related reason to be at Columbia Heights. Rather, she went so she could have lunch at IHOP. Finally the injury occurred while Claimant was traveling back to work after her break and not while she was fulfilling duties of employment or doing something reasonably incidental thereto. Claimant's employment duties were performed at Metro Center.

The ALJ determined and neither party has challenged that:

Resolution of this claim calls for an analysis of the interplay between the treatment of "arising out of and in the course of employment" as two distinct elements and the quantum analysis propounded by Professor Larson and adopted by the CRB.

CO at 3.

#### *Arising out of Employment*

As is well settled, an injury arises out of employment where the obligations or conditions of employment expose the employee to the risks or danger connected with the injury. *Grayson v. DOES*, 516 A.2d 909 (D.C. 1986)(*Grayson*) As the D.C. Court of Appeals later clarified, "an injury arises out of employment so long as it would not have happened but for the fact that conditions and obligations of the employment placed Claimant in a position where he was injured. *Bentt v. DOES*, 979 A.2d 1226 (D.C. 2009); *Georgetown Univ. v. DOES*, 971 A.2d 909 D.C. 2009).

After setting forth the positional risk test and concluding that the application of a quantum analysis set forth in *Georgetown Univ.*, *supra* 971 A.2d at 919, was proper, the ALJ concluded:

The circumstances of Ms. Brody's injury support the conclusion that, but for her position as a station manager, where she is required to help patrons throughout the day, she would not have been injured. Without an understanding of the purpose behind the payment she received for time between shifts, there is no way to determine what portions of Ms. Body's off-work time were paid or not paid. The simplest inference is that she was paid for lunch, which is what she was returning from at the time of her injury, and to help WMATA customers during incidental contacts that might occur when Ms. Brody used the Metro system but was not working a shift. HT at 25, 35. Whatever the quantum is – that is, the minimum amount of facts needed to support Ms. Body's claim – she has exceeded it by credibly testifying that she was wearing her uniform, her job included assisting patrons, she answered questions from patrons that were posed to her at stations other than the one assigned to her, she was traveling back to her assigned station, Metro provided her with free transportation throughout its system, she was returning from lunch, and she was injured at the Columbia Heights station. HT at 19 *et seq.*

While we detect no error in applying the quantum' approach in assessing whether Claimant's injury arose out of and occurred in the course of his employment, the record evidence does not support a single connection between her employment and the injury. The panel agrees with employer that substantial evidence does not support a finding of a neutral risk as the risk was strictly a personal risk. *See Soriano v. Renaissance Mayflower Hotel*, CRB No. 14-082 (October 30, 2014)

We disagree with the ALJ that there is substantial evidence in the record to support the conclusion that because Claimant was wearing her uniform, she was assisting patrons while traveling back to her assigned station. It is undisputed that Claimant was on a three hour shift break. We address the issue of whether Claimant was being paid by Employer when she was injured when we address the ALJ's "in the course" discussion. The record supports employer's assertion that:

Moreover, even if it was during the lunch break, the record contains no evidence to support a finding that she was being paid at the time of the injury. There was no expectation of Claimant at the time of her lunch break. Claimant was free to do whatever she wanted during those three hours and Employer had no connection with her during the three hours regardless of whether or not she kept her uniform on.

Employer's Brief at 6.

We also agree with Employer that the mere wearing of a uniform meets the "in the course of test" and that there is no evidence to support Claimant's proposition that she was assisting patrons when the injury occurred.

With regard to the use of Employer's fare card, the CRB has previously agreed with AHD that transit use was permissive and not mandatory and that it is available whether for commuting or otherwise and Employer does not obtain any benefit from Claimant's transit use as opposed to any other method of conveyance. *See Bryant v. WMATA*, CRB No. 12-009 (March 21, 2012)

In sum we reject the ALJ's ultimate conclusion that:

The circumstances of Ms. Brody's injury support the conclusion that, but for her position as a station manager, where she is required to help patrons throughout the day, she would not have been injured.

*In the Course of Employment.*

Citing *Grayson* the ALJ determined that:

Because Ms. Brody received paid time between her breaks for lunch, she satisfied the "in the course of employment" question. Even assuming that view does not control, which it does, there is another reason her claim meets the "course of employment" test. Because she was in uniform and on WMATA's premises when she was injured, her injury would have been in the course of employment because another persuasive inference, which I make based on her off-shift compensation, is that Ms. Brody was compensated for those moments when she was expected to answer questions from the public while she was still in uniform but not actually working a shift.

CO at 3.

We must note that while the ALJ stated that it is "undisputed" Claimant was paid for a portion of the time between her two shifts, the ALJ conceded, "there is no way to determine what portions of Ms. Body's off-work time were paid or not paid. The simplest inference is that she was paid for lunch, which is what she was returning from at the time of her injury". CO at 4. While this Panel finds it unfortunate that Employer, who is in the best position to do so, was unable to make a proffer as to what Employer was paying Claimant for with the extra 47 minutes of paid time, we do not agree with the ALJ's "simple inference" theory that she was being paid for lunch between the two shifts and therefore that time period covers her injury.

When asked about the forty seven minutes that she is paid for, Claimant testified that ten minutes of it is for prep time and that she was not sure how Employer breaks up the remaining 37 minutes. HT at 22. A possibility is that Claimant received the pay to put employees on equal footing with employees who work a regular shift and receive a paid lunch break. However it would seem more reasonable to place the thirty-seven minute break after Claimant worked the morning shift (10:00 am) as it is at this time that she would need to take a break had she worked 4 straight hours.

Thus we conclude that the ALJ's assignment of the forty seven minutes of pay to cover the time of the injury is an arbitrary abuse of his discretion not supported by law.

We further note Claimant takes issue with Employer's assertion that Claimant was not on Employer' premises at the time of the injury as she was outside of the station. We nevertheless agree with Employer that:

. . . even if she had crossed the threshold into WMATA property, there was no employment related reason for her to be at the Columbia Heights location. The standard requires a finding that the injury resulted for a risk incidental to the environment in which Claimant was placed by her employment. *Acosta v. Il Creations*, CRB No. 13-017 (May 14, 2013). Here the risk was incidental to the environment in which Claimant placed herself not the environment that WMATA placed her in. She was at Columbia Heights because she decided to be not because WMATA asked her to be or required her to be.

Employer's Brief at 6, 7

We must also reject the ALJ's reasoning that the location of the accident at a Metro station which Employer operated is the equivalent of an injury occurring on Employer's premises as the Columbia Heights Station, while it is a Metro station owned by Employer, it is not where Claimant reported to work each day. Claimant's employment was at Metro Center and all of her duties were performed at this location.

#### CONCLUSION AND ORDER

The finding that but for her position as a station manager, where she is required to help patrons throughout the day, she would not have been injured is not supported by substantial evidence and the conclusion that Claimant's injury as a result of the February 12, 2015 fall arose out of and in the course of her employment is not in accordance with law. The decision is reversed and the award is vacated. The matter is remanded to AHD with instructions that an order denying the claim be entered. *See WMATA v. DOES*, 926A.2d 140 (D.C. 2007).

*So ordered.*