

CASE SUMMARIES

By Jeffery Ortinau, J.D.

Workers' Compensation/Appellate Court Review (September 2011)

Johnson v. Illinois Workers' Compensation Commission, No. 2-10-0418 WC, 2011 WL 3689356 (2d Dist. Aug. 15, 2011)

Appellate Summary: Where county deputy sheriff left his assigned area (and county of employment) while on duty for a personal errand and was thereafter injured outside the county of employment but while responding to a call to assist a fellow deputy, claimant was "injured in the course of his employment," and Commission decision that he was not, was erroneous.

Facts: The petitioner, Johnson, was a deputy sheriff for Will County assigned to patrol specific areas in that county. On the day of the accident, he was working an 11 p.m. to 7 a.m. shift. He left his assigned area and entered DuPage County to pick up his mail at a post office. He did not request permission from the dispatcher to leave Will County nor did he notify the dispatcher of his location. He testified that it was not unusual for deputies to perform personal errands while on duty but admitted that permission should have been obtained before leaving his assigned area.

The dispatcher contacted him to assist another deputy sheriff in a traffic stop. A dispatch is considered an order from the sheriff that must be obeyed. The petitioner acknowledged the assignment but did not specify his location. While going to the assignment, the second deputy contacted Johnson to determine his time of arrival. Johnson told the second deputy that he was five minutes away when in fact he was between ten and fifteen minutes away. While proceeding to the call location, Johnson entered an intersection against the traffic signal and was struck by another car. After this collision, Johnson notified the dispatcher of his location in DuPage County and his involvement in an accident. The dispatcher testified she would have assigned another deputy had she known the petitioner was outside of his assigned area.

Johnson was suspended without pay for eight days. The dispatcher testified that, in general, deputies are not restricted from travelling outside their assigned areas but should stay in close proximity to them. In this case, the petitioner was about 20 miles from where the deputy who requested assistance was located. The chief deputy testified the petitioner had violated the department's rules by leaving his assigned patrol zone. The chief deputy admitted that the petitioner was on duty when he was involved in the accident.

Administration Review and Circuit Court Rulings: The arbitrator issued a decision in favor of the petitioner. Both sides filed reviews before the Commission. In a 2-1 decision, the Commission reversed the award, finding the petitioner was engaged in a personal deviation and that the accident resulted from his misconduct. The circuit court reversed the Commission's decision and the appeal followed.

Appellate Court Ruling: In a 3-2 decision, the appellate court determined the accident arose out of and in the course of the petitioner's employment. The majority first considered the standard of review required. Will County argued that a clearly erroneous standard should apply; however, the court found that the Illinois Supreme Court has never applied that standard to a workers' compensation case. The court determined that the facts were undisputed and susceptible to a single inference. As such, the question was one of law and a de novo standard applied. The majority found it was undisputed that the petitioner was responding to a radio assignment — which was an order from the sheriff that was to be obeyed — at the time of the. This satisfied the “arising out of the employment” issue. The remaining issue was whether the accident occurred in the course of his employment. For the majority, the personal deviation ended when he received the dispatch. This brought him back into the course of his employment. The majority elaborated on this holding that the petitioner was in the “sphere” of his employment — notwithstanding the fact that he had violated the department’s rules. The dissenting justices felt the majority substituted its fact finding for the Commission’s and would have reversed the judgment of the circuit court reinstating the Commission’s decision.