2000

AE Clevite, Inc. and Liberty Mutual Insurance Company v. Labor Commission of Utah : Reply to Brief in Opposition

Utah Supreme Court

Alan L. Hennebold; K. Dawn Atkin; Gary E. Atkin; Attorneys for Respondents.
Michael E. Dyer; Dori K. Petersen; Attorneys for Petitioners.

-- IN THE SUPREME COURT OF UTAH --

AE CLEVITE, INC. and LIBERTY MUTUAL INSURANCE COMPANY,	:	Utah Supreme Court Case No.: 20000205
Petitioners,	:	
vs.	:	Utah Court of Appeals Case No.: 990218-CA
LABOR COMMISSION OF UTAH and CHARLES TJAS,	:	Labor Commission No.: 97-0538
	:	Priority 7
Respondents.	:	

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI AE CLEVITE and LIBERTY MUTUAL INSURANCE CO.

Appeal from the Utah Court of Appeals

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ARGUMENT

I. PETITIONERS ARE NOT SEEKING TO CREATE AN EXCEPTION TO THE WORKERS COMPENSATION ACT FOR THE EXCLUSION OF ALL INJURIES WHICH OCCUR AT A HOME WORK SITE.

Respondent Charles Tjas argues that Petitioners, AE Clevite, Inc. and Liberty Mutual Insurance Co. (hereinafter referred to jointly as "AE Clevite"), are requesting this Court to "engraft an exception to Utah's determinative statute, so that it would provide coverage 'wherever such injury occurred,' unless such an injury occurred at home." (Brief of Respondent Charles Tjas (Employee) in Opp. to Pet. for Writ of Cert., hereinafter referred to as "Employee's Opp. Brief," p. 9) (emphasis in original).

Unfortunately, for whatever reason, Respondent Tjas has chosen to mischaracterize the position of AE Clevite. Petitioners are not seeking an exception to the provisions of the Utah Workers Compensation Act. Rather, AE Clevite is requesting that this Court accept review of the Court of Appeals' opinion in order to evaluate the appropriate legal standard to apply, in a case of first impression, to the new, and rapidly expanding, situation of an employee who performs part of his work at a home work site. AE Clevite does not seek to exclude an injury merely because it occurred at a home work site; rather, Petitioners ask this Court to adopt a legal standard which is consistent with Utah case law, the majority position of jurisdictions across the country, and the standard proposed by Professor Larson.

Under the standard proposed by AE Clevite, an injury at a home work site would

be compensable as long as there is a substantial work relationship between the accident and the employee's work. For example, a claim for carpal tunnel syndrome by an employee who performs repetitive upper extremity work, i.e., data entry or typing, at a home work site would likely be compensable. Similarly, if Mr. Tjas had fallen while loading his car with work-related materials, his claim would clearly be compensable. This standard is consistent with Professor Larson's proposed rule which allows compensation for injures at a home work site when the accident occurs during the actual performance of the work. 1A. Larson, Larson's Workers Compensation, desk Edition, § 18.34 (1998) (emphasis added).

Prior Utah cases have recognized that employees who have been injured while away from an employer-controlled facility will receive benefits when the facts demonstrate a substantial work relationship, thereby shifting a personal risk to a risk assumed by the employer. See, e.g., Black v. McDonald's of Layton, 733 P.2d 154 (Utah 1987) (recreational cases evaluated by a 4-part test in order to determine question of sufficient work relationship); State Tax Comm'n v. Industrial Comm'n, 685 P.2d 1051 (Utah 1984) (special mission exception); Ogden Standard Examiner v. Industrial Comm'n, 663 P.2d 88 (Utah 1983) (dual purpose rule requiring that the business purpose predominant); Hafer v. Industrial Comm'n, 526 P.2d 1188 (Utah 1974) (employee is engaged in actual assigned work duties); Moser v. Industrial Comm'n, 440 P.2d 23 (Utah 1968) (employee is acting at the specific direction of the employer); Buczynski v. Industrial Comm'n, 934 P.2d 1169 (Utah Ct. App. 1997) (traveling employee doctrine).

II. THE ISSUE OF THE APPROPRIATE STANDARD TO APPLY TO INJURIES WHICH MAY OCCUR AT A HOME WORK SITE HAS NEVER BEEN PREVIOUSLY ADDRESSED BY THE UTAH APPELLATE COURTS OR THE UTAH LABOR COMMISSION.

Mr. Tjas asserts that this case does not present an issue of first impression. Rather, he argues that it merely presents a situation which neither the Utah appellate courts nor the Labor Commission has ever reviewed. This argument is a distinction without a difference. Neither the opinion from the Court of Appeals, nor the decision from the Labor Commission, nor any of Respondents' briefs, have identified any Utah case with facts similar to those presented in this case. Given the significant – and expanding – scope of work-at-home employees, this Court should enunciate the legal standard to apply to such situations.

The provisions of the Workers Compensation Act state that in order for an injury to be compensable it must "arise out of and in the course of" the claimant's employment. These statutory terms have been interpreted over the years by the Utah Supreme Court in a variety of circumstances and situations. Rather than merely state and apply a general standard to all cases, this Court has, instead, established a number of legal standards which govern the particular nature of a claim. For example, while the statute states that an accident may be compensable "wherever such injury occurred," the Court has adopted different standards which expressly look to where the injury occurred. Specifically, the Court has adopted the "personal comfort rule" and the "premises rule" for injuries occurring on an employer-controlled premises. For injuries occurring away from an

employer-controlled premises during business related activities, the Court has adopted the "dual purpose" rule. The Court has also recognized the "going and coming" rule, and numerous exceptions to this rule, to govern claims involving travel between home and the work place. The Court has adopted a four-part test for cases involving employee recreation. This four-part test builds upon and is complimentary to the standards established by the premises rule and dual purpose rule.

In short, this Court has never simply applied a blanket standard to all cases. Rather, it has adopted a particular standard to apply to the unique circumstances of the claimed accident. This pattern by the Court appropriately recognizes that there are varying policy interests which should be considered and weighed in determining the ultimate conclusion of whether an injury "arises out of and in the course of" employment. See, e.g., Martinson, 606 P.2d 256 (Utah 1980) (discussing the unique problem of defining work related activities in occupations which have no set place or hours for performing work).

In its Order, the Labor Commission expressly stated that it found no prior Utah case law or Labor Commission opinion which specifically addressed this issue. It therefore referred to general language from an old Utah case which, quite clearly, was never intended to apply to the varying circumstances of all claimed injuries. The result, adopted blindly by the Utah Court of Appeals based upon a standard of review analysis, is an extremely broad and difficult rule to manage inasmuch as almost any home activity can, arguably, be found to be "incidental" to some work activity.

III. PETITIONERS' ARGUMENT – THAT SUBJECTIVE MENTAL INTENT SHOULD NOT BE A SUFFICIENT BASIS FOR AN AWARD OF BENEFITS – WAS ASSERTED AND BRIEFED BEFORE THE COURT OF APPEALS.

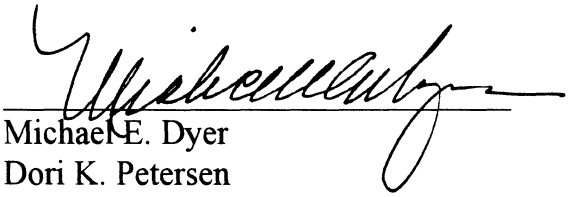
Mr. Tjas claims that AE Clevite asserts, for the first time in this Writ, that Mr. Tjas' mental intent is an insufficient basis upon which to award workers compensation benefits. This argument is inaccurate. Mr. Tjas' argued to the Court of Appeals that he should be awarded benefits based upon his subjective intent to benefit, potentially, his employer when he salted his driveway on the day of his accident. Consequently, in response, in section (C) of Argument I of AE Clevite's Reply Brief before the Court of Appeals, AE Clevite argued that Mr. Tjas' mental intent, without other objective facts to support a work relationship, was an insufficient ground to award benefits. The Court should accept the Petition for Writ of Certiorari so that this matter may be fully briefed and discussed before the Court.

CONCLUSION

This case presents a special and important issue of first impression which this Court should accept for review and consideration.

DATED this 17th day of April, 2000.

BLACKBURN & STOLL, LC



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CERTIFICATE OF MAILING

I certify that two true and correct copies of the foregoing **REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI** was mailed to the following parties by first class, postage prepaid, on the 17th day of April, 2000.

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