

1980

Michael E. Wood v. Thompson Flying Service, and State Insurance Fund : Appellant'S Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

PETER W. GUYON; Attorney for AppellantTIMOTHY C. HOUP'T; Attorneys for Attorney for Respondents

Recommended Citation

Brief of Appellant, *Wood v. Thompson Flying Service*, No. 16912 (Utah Supreme Court, 1980).
https://digitalcommons.law.byu.edu/uofu_sc2/2187

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL E. WOOD,	:	
Appellant,	:	APPELLANT'S BRIEF
vs.	:	
THOMPSON FLYING SERVICE, and STATE INSURANCE FUND,	:	Case No. 16912
Respondents.	:	

Appeal from the final Order of the Industrial Commission
of the State of Utah and Administrative Law Judge Keith E. Sohm.

PETER W. GUYON, Esq. of
ROBINSON, GUYON, SUMMERHAYS & BARNES
1220 Continental Bank Building
Salt Lake City, Utah 84101
Telephone: (801) 355-5200
Attorneys for Appellant, Michael
E. Wood

TIMOTHY C. HOUPPT, Esq.
Suite 500 Ten West Broadway
Salt Lake City, Utah 84101
Telephone: (801) 363-2727
Attorney for Respondents,
Thompson Flying Service and
State Insurance Fund

FILED

APR 28 1980

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

MICHAEL E. WOOD,	:	
Appellant,	:	APPELLANT'S BRIEF
vs.	:	
THOMPSON FLYING SERVICE, and STATE INSURANCE FUND,	:	Case No. 16912
Respondents.	:	

Appeal from the final Order of the Industrial Commission
of the State of Utah and Administrative Law Judge Keith E. Sohm.

PETER W. GUYON, Esq. of
ROBINSON, GUYON, SUMMERHAYS & BARNES
1220 Continental Bank Building
Salt Lake City, Utah 84101
Telephone: (801) 355-5200
Attorneys for Appellant, Michael
E. Wood

TIMOTHY C. HOUPPT, Esq.
Suite 500 Ten West Broadway
Salt Lake City, Utah 84101
Telephone: (801) 363-2727
Attorney for Respondents,
Thompson Flying Service and
State Insurance Fund

TABLE OF CONTENTS

	<u>Page</u>
I. NATURE OF THE CASE -----	1
II. DISPOSITION AT THE ADMINISTRATIVE LEVEL -----	1
III. RELIEF SOUGHT ON APPEAL -----	1
IV. STATEMENT OF FACTS -----	1
V. ARGUMENT	
1. This Court has the Power to Accord the Ruling Requested by the Appellant -----	3
2. The Administrative Law Judge Misapplied the Legal Standards to the Facts of this Case -----	4
A. Utah case law was not correctly applied to the facts of this case -----	4
B. Non-case law standards relied upon by the Administrative Law Judge have not been correctly applied to the instant facts -----	7
C. There is insubstantial evidence to support certain findings of fact by the Administrative Law Judge -----	9
VI. CONCLUSION -----	10

Cases Cited

<u>Bingham Mines Co., vs. Allsop</u> , 203 P. 644 (1921) ----	3,4
<u>Cudahy Packing Co., of Nebraska vs. Brown</u> , 210 P. 608,610 (1922) -----	4
<u>M & K Corp., vs. Industrial Commission</u> , 189 P.2d 132 (1948) -----	6
<u>Morley vs. Industrial Commission</u> , 459 P.2d 212 () -----	4,7

Twin Peaks Canning Co., vs. Industrial Commission, 196 P. 853 (1921) -----	5
---	---

Reference Cited

Larson on Workmen's Compensation -----	4,8
--	-----

I.

NATURE OF THE CASE

Application by Michael E. Wood to the Industrial Commission of the State of Utah to recover temporary total disability benefits for a work-related injury.

II.

DISPOSITION AT THE ADMINISTRATIVE LEVEL

Application denied on November 28, 1979; Motion for Review denied January 22, 1980.

III.

RELIEF SOUGHT ON APPEAL

Appellant seeks to set aside the Administrative Law Judge's denial of benefits.

IV.

STATEMENT OF FACTS

Appellant, Michael E. Wood, was hired by Respondent, Thompson Flying Service, (hereinafter "Thompson") on May 11, 1978 as Vice-President of Operations and continued in that capacity as an employee until January 22, 1979, earning One Thousand Four Hundred Dollars (\$1,400.00) per week (R 38, L 6-17).

On July 29, 1978, Appellant was injured at about 10:30 o'clock p.m. in a fall from an open vehicle in which he was riding with the President of Thompson, two (2) co-workers at

Thompson and a client of Thompson. The five (5) persons were on the premises of Appellant's place of employment and at a time of day when it was not uncommon that Appellant be engaged in work-related activities. The fall causing Appellant's injury was precipitated by Appellant's losing his balance stepping off the moving vehicle while trying to avoid having beer poured in his lap by one of the co-workers (R 42, L 13-19).

Appellant's testimony is clear that [1] he had no "9 to 5" job, but rather was expected to be available at any time (R 42, L20-25; R 43, L 1-7; R 45, L 1-8); [2] he had administrative and public relations duties in which he was engaging at the time the accident occurred (R 44, L 1-21); [3] he was engaging in the activities with the company president, two co-workers and a company client (R 41, L 25; R 42, L 1-4); and [4] the accident occurred arising out of and directly connected with these activities (R 42, L 14-19).

Appellant initially secured his position with Thompson because of his status as a professional pilot (R 52, L 22-24) and it is clear that subsequent to the accident and Appellant's forced termination on January 22, 1979, Appellant was unable to resume any employment in that he was unable to secure a first-class medical certificate (R 47, L25; R 48, L 4).

V.

ARGUMENT

1. This Court has the Power to Accord the Ruling Requested by the Appellant.

It is clear under the provisions of 35-1-84 Utah Code Annotated (1953) that this Court may set aside any award of the Industrial Commission on either of the following grounds:

- (1) That the Commission acted without or in excess of its powers;
- (2) That the findings of fact do not support the award.

Appellant contends that the Administrative Law Judge misapplied the law to the facts of this case and that such act was an abuse of discretion and outside the Judge's power and/or constitutes grounds under Section 2 above to set aside on the basis that the evidence so adduced when applied to the law, was insufficient to justify the award.

That the requested inquiry and relief is within the scope of the Court's power to grant is clearly set forth in two early cases decided by this Court. In Bingham Mines Company vs. Allsop, 203 P. 644 (1921), the Utah Supreme Court, in commenting on the appropriate scope of review in an Industrial Commission case. stated at 645:

. . .the question whether there is any substantial evidence to support an award is a question of law. . .

A year later the Court observed as follows on the same issue in the case of Cudahy Packing Co., of Nebraska vs. Brown, 210 P. 608, 610 (1922):

. . .the legal effect of the evidence produced is a question of law which it is the duty of this court to decide.

It is in accordance with and within these guidelines that Appellant seeks the annulment of the failure of the Industrial Commission to accord the benefits sought.

2. The Administrative Law Judge Misapplied the Legal Standards to the Facts of this Case.

A. Utah case law was not correctly applied to the facts of this case.

Appellant argues that the Morley vs. Industrial Commission, 459 P.2d 212 (), case upon which the Administrative Law Judge relied cannot be controlling here because of the great disparity of facts between Morley, and the instant case and further argues that the standards alluded to by the Administrative Law Judge in Larson on Workmen's Compensation very clearly support Appellant's claim for relief. Thus, Appellant urges that the question here is one legal in nature, i.e., a misapplication of law, and one which is therefore subject to review in this Court.

The legal standard relating to "course of employment" has been before this Court more than several times in the past. In the case of Twin Peaks Canning Co., vs. Industrial Commission, 196 P. 853 (1921), this Court allowed recovery of benefits to the mother of a fourteen (14) year old child killed [1] during a work day [2] while playing on an elevator, [3] which had nothing to do with his job, and [4] from which the child had been specifically warned to stay away. The Court held, in pertinent part, at 858:

. . .the mere fact that the injured employee at the time of the accident, was not in the discharge of his usual duties or was not directly engaged in anything connected with those duties, does not necessarily prevent him from recovering compensation in case of accidental injury. In that connection it must be remembered that, while a human being may do no more than what a machine might do, yet he cannot be classed as a machine merely. If during his working hours there are intervals of leisure, he may, during such intervals, within reasonable limits, move from place to place on the premises of the employer in case he refrains from exposing himself voluntarily to known or visible hazards or dangers. In moving about as aforesaid he may also have social intercourse with his co-employees, and within reasonable limits may "visit" with them. In doing these things within the bounds of reasons, the employee does not go outside of the course of his employment. (Emphasis added.)

This very broad standard was again recognized in M & K Corp., vs. Industrial Commission, 189 P.2d 132 (1948) where this Court allowed recovery to the widow of a deceased employee who was killed in a truck rollover even though the decedent's unlicensed fourteen (14) year old son was driving the 10-wheel truck, with decedent's permission, at the time of the accident! In regard to this "course of employment" question, the Court observed at 134 that it refers to:

. . . the time, place, and circumstances under which [an accident] occurred. . . .

The Court further indicated at 134 that:

We have also repeatedly held that this statute should be liberally construed and if there is any doubt respecting the right to compensation it should be resolved in favor of recovery.

And further, indicating the breadth of the application of the statute, indicated, also at 134:

In other words, the requirement that the accident arise in the course of the employment is satisfied if it occurs while the employee is rendering service to his employer which he was hired to do or doing something incidental thereto, at the time when and the place where he was authorized to render such service.

In each of these situations the "horseplay" or extent of deviation from employment was substantial, yet recovery was allowed. However, in the instant case recovery was denied in a situation where the "horseplay" or deviation, if in fact there was any, was miniscule. Therefore, the legal standard has been misapprehended

or misapplied, and as such is subject to review. In regard to Morley, and the application thereof under this case, it seems extremely clear that those principles cannot apply to the facts of this case in any meaningful or justifiable fashion. In the case of Morley it was clear that Morley's activity at the time of the accident was not rationally related to his normal employment as a carpenter and that Morley was nowhere near his place of employment at the time of the accident. Further, in the Morley case, there were no co-workers, clients or other persons connected with Mr. Morley's business with Mr. Morley at the time of the accident. However, such is not the case in Appellant's situation. Not only was Appellant engaged in an activity with his boss and two co-workers, but with a client to whom Appellant had some responsibility (R 44, L 1-18). Further, Appellant was on the premises of his job at a time when it was common for him to be on the job and under circumstances where he had remained at the job during the entire day and was still there at the time of the accident. Thus, the facts of this case do not in any manner whatsoever parallel those of the Morley case, and their application to the standards set forth in that case is entirely unjustified.

B. Non-case law standards relied upon by the Administrative Law Judge have not been correctly applied to the instant facts.

The Administrative Law Judge applied standards set forth in

Larson on Workmen's Compensation and concluded that the facts of this case fell outside the area circumscribed by this authority within which compensation would be allowed.

First, the Administrative Law Judge found that Appellant deviated from the course of his employment so seriously that recovery of any compensation is unjustified. Certainly, it is clear from the record that Appellant's actions were not a deviation of any consequence, if indeed his actions constituted a deviation at all. The fact that Appellant was at the place of his business, had remained at the place of business during the entire day and was still there, that he was with his boss and two other co-employees and a client all indicate that any deviation from the course of Appellant's employment was minuscule at most. Neither can it be found that the facts of this case justify the refusal to award Appellant benefits under the second criterion discussed by Larson. Assuming for purposes of argument that there was a deviation from a course of his employment by Appellant certainly the deviation was not complete and in any event was commingled with the performance of his duty and can in no way be construed to be an abandonment of that duty. Under the third criterion set forth by Larson, the Administrative Law Judge has construed from the record that the activities immediately preceding

the accident were not an accepted part of the employment. Certainly the fact that Appellant's boss was present just prior to the accident and that if his boss had not ordered the beer himself, he at least acquiesced in its acquisition, indicates that the general activities engaged in were an accepted or acceptable part of the employment. This position further supports Appellant's argument against the position taken by the Administrative Law Judge under the fourth criterion of Larson, i.e., the extent to which the nature of the employment may be expected to include some such horseplay. With the President of Appellant's employer present as well as other high level employees, it can hardly be concluded, nor should it be, that no horseplay was to be expected under the circumstances of that situation.

C. There is insubstantial evidence to support certain findings of fact by the Administrative Law Judge.

The ultimate issue of fact which Appellant claims was incorrectly deduced by the Administrative Law Judge is whether or not Appellant was engaged in an activity which constituted a deviation from his course of employment sufficient under current Utah law to deprive Appellant of benefits under Workmen's Compensation statutes. The recitation of facts by the Administrative Law Judge (R 77-79) is substantially correct, although at least one salient fact has been overlooked. Appellant testified (R 42, L 1-4) that Wayne Wienecke, who was the owner of Thompson's Flying

Service, Appellant's employer, was also present at the time of the accident. Thus, it seems pertinent that present were a co-worker of Appellant, Barry Hansen, another co-worker, Jim Powers, the President of Thompson Flying Service and Jim Hunt, a client of Thompson Flying Service. Thus, there were five (5) people present, including Appellant, and of that total five, four were officers and/or employees of Thompson Flying Service and one of five was a client of Thompson Flying Service. (See also R 42, L 14-19.)

VI.


CONCLUSION

There can be no doubt that this Court has the power to grant the relief sought by Appellant, and good arguments exist for doing so, as Appellant has heretofore set forth. But there is at least one other reason, and that is to turn the tide at the administrative level and to keep the Industrial Commission from assuming the posture of an entity the very reason for the existence of which is to seek to avoid compensating injured employees if any reason whatsoever, no matter how slight, may be found for doing so. The administrative posture should be in nature more willing to compensate and rather than seeking to avoid ways to accord monetary relief, should seek to find and identify within the law and facts of each individual case ways

to give relief if justified. Certainly there is great motivation on the part of employers to fight such a trend, inasmuch as a lack of recoveries equals lower insurance rates for them. However, the fact of lower insurance rates flowing from fewer recoveries also tends to lower the employers' motivation to maintain safe working conditions, a result certainly less than desirable.

In the instant case Appellant respectfully requests the Court to accord the relief hereinabove requested.

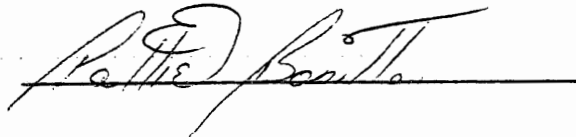
RESPECTFULLY SUBMITTED this 28th day of April, 1980.



PETER W. GUYON, ESQ. of
ROBINSON, GUYON, SUMMERHAYS & BARNES
1220 Continental Bank Building
Salt Lake City, Utah 84101
Attorney for Appellant

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that two (2) true and correct copies of the foregoing Brief of Appellant was served upon Timothy C. Houpt, attorney for Respondents Thompson Flying Service and State Insurance Fund, by mailing, postage prepaid, the same this 28th day of April, 1980 to him at Suite 500 Ten West Broadway Building, Salt Lake City, Utah 84101.

A handwritten signature in cursive script, appearing to read "R. H. Smith", is written over a horizontal line.