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Recent Developments: Dade County School Board v. Polite: Florida Accepts the Premises Exception to the Going and Coming Rule for Workers' Compensation Benefits

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282 Md. 413, 384 A.2d 742 (1978). In *Feissner*, liability of the employer and its insurer was simultaneously discharged under a statutory offset provision when the claimant received superior benefits from a government pension plan. This discharge occurred before the attorney had filed a fee petition. However, in the case herein as well as in *Hoffman*, the appellee's liability was not discharged. The attorney's lien "subsequently did attach to a portion thereof, obligating the appellees to pay claimant's attorney." *Id.* at 53, 517 A.2d at 354.

The court in *Staley* has clarified any ambiguity that may have existed concerning the procedures to follow for attorney fees stemming from workers' compensation cases. It is clear that the court here has rightfully placed the interests of the compensation claimant ahead of governmental bureaucracy.

–Christopher Hale

Dade County School Board v. Polite: FLORIDA ACCEPTS THE PREMISES EXCEPTION TO THE GOING AND COMING RULE FOR WORKERS' COMPENSATION BENEFITS.

In *Dade County School Board v. Polite*, 495 So.2d 795 (Fla.App. 1 Dist. 1986), the District Court of Appeal of Florida affirmed the Deputy Commissioner's determination that a teacher's injuries were compensable in that they arose out of and in the course of employment. The District Court of Appeal of Florida also held that the teacher was not precluded from receiving benefits by the rule that an employee going and coming from work is normally considered outside the scope of his employment, thereby recognizing the premises exception.

In *Dade County*, a physical education teacher, Ms. Cheryl Polite, was injured when her automobile was struck by a hit-and-run driver after she had left a track meet. At the time of the accident she was returning the track equipment to the school from which she had borrowed it. Polite was employed by the Dade County School Board as a physical education teacher. Polite taught at North Glade Elementary School in the morning and at Lake Stevens Elementary School in the afternoon, five days a week. Although her workday officially ended at 3:05 p.m. daily, Polite participated in after-school activities which were officially encouraged and reflected in a positive fashion on teacher evaluations. Throughout Polite's employment she had consistently participated in extracurricular activities with which the Dade County School Board had knowledge of and given its approval.

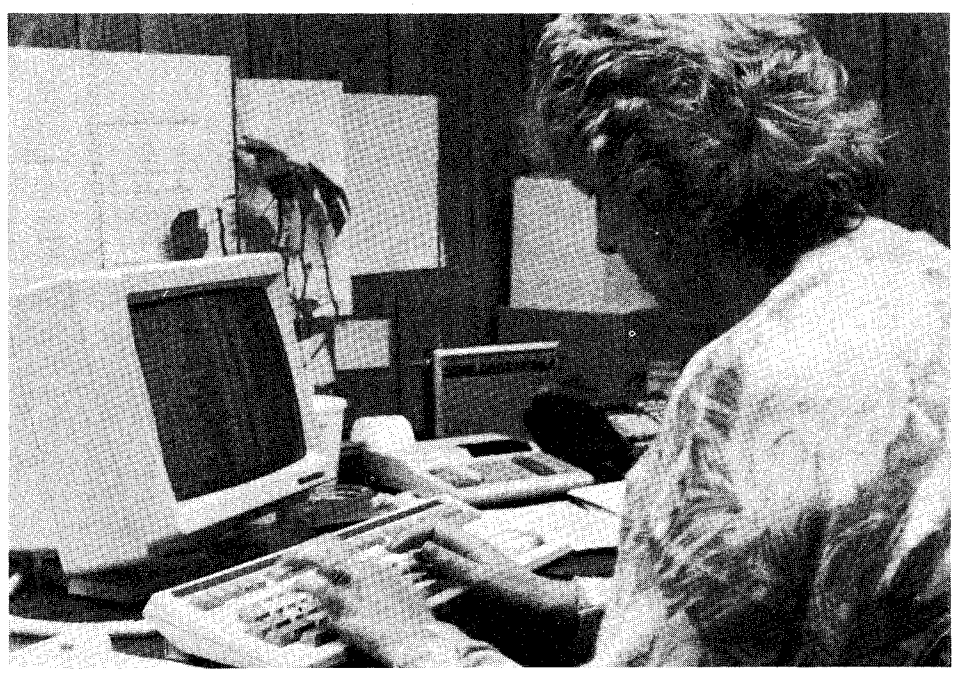
On the day of the accident, a track meet involving students from Polite's morning school, North Glade, was held at Skylake Elementary School in the afternoon. Polite was to teach physical education at Lake Stevens Elementary School that afternoon, but, on this day the Lake Stevens' students were released from school at 1:45 p.m. Nevetheless, Polite was required to remain until 3:05 p.m. Polite then requested and was granted permission to leave Lake Stevens earlier than 3:05 p.m. Before leaving Polite collected some of Lake Stevens' track equipment which she knew might be needed at the track meet. Because she felt that the equipment might be needed the following day by Lake Stevens' instructors, Polite intended to return the equipment immediately following the track meet.

Ms. Polite went to the track meet and assisted at the starting line. She left Skylake before 4:00 p.m. traveling the *only* road leading away from the school en route to Lake Stevens to return the track equipment. While on the road, Polite's automobile was struck in the rear by a hit-and-run driver, causing injury to her back, foot, right knee and right hand.

Appellants Dade County School District and their insurer, Gallagher Bassett Insurance Service, argued that Polite's claims for medical expenses should be denied because of the "going and coming rule." In the alternative, the appellants argued that Polite's injuries were not compensable because attendance at the meet was not in the course of her employment because there was no requirement that she attend. The Deputy Commissioner in determining that the injuries were compensable held that the "after hours teacher participation was expected and considered in performance evaluations." 495 So.2d at 797. The Deputy Commissioner further held that Ms. Polite was not precluded from benefits by the going and coming rule because she was not traveling to her home, but was en route back to Lake Stevens to return the track equipment. Therefore, the commissioner determined that the injuries arose out of and in the course of Polite's employment, thereby allowing the medical benefits sought and not precluding them by the going and coming rule. *Id.* at 797.

The District Court of Appeal of Florida, in affirming the Deputy Commissioner's determinations, stated that the encouragement and reward by way of positive performance teacher evaluations was "competent" and "substantial evidence" to show Polite was in the course of her employment. *Id.* at 797. Further support for the court's holding was found in the fact that Polite "did not merely elect to attend" the after school activity since the activity was related to her field of expertise. The court also found other evidence from which it could have been reasonably inferred that "Polite arrived and assisted at the meet at least partially during her regular working hours, since she sought and obtained official permission to leave her afternoon assignment early in order to attend." *Id.*

In affirming the commissioner's decision that medical benefits are not precluded by the "going and coming rule," the court first stated the general proposition expounded in *Stacy v. Cherry Farms, Inc.*, 449 So.2d



393 (Fla. 1st DCA 1984) that an employee going and coming from work is outside the scope of his employment. However, the District Court of Appeal of Florida looked to *Sweat v. Allen*, 200 So. 348, 350 (Fla. 1941) in stating that the "applicability of the rule depends upon the circumstance of the particular employment." The court agreed with the commissioner's decision and found that Polite was not "off-duty away from the employer's premises." *Id.* Further, the court stated that "compensability is almost always awarded when the injury occurs while the employee is traveling along a public road between two portions of the employer's premises", citing Larson on Worker's Compensation Law § 15-14(a) (1985). The court's essential reasoning for finding an exception to the going and coming rule was grounded in the fact that Ms. Polite's duties required her to be in two different locations within the Dade County school system, and the travel between the two different workplaces "was an essential part of her employment." *Id.*

The District Court of Appeal of Florida examined this case in two steps. First, an examination of the compensability of the injury found that the encouragement of participating in after school activities, coupled with the official permission and knowledge of such participation by the Dade County School System was substantial and competent evidence that the injury arose out of and in the course of Polite's employment. Second, the findings that Polite was not "off-duty" at the time of the accident, and that she was traveling the only road available allowed the court to accept the Larson premises exception to the "going and coming rule." The importance of this Florida court's opinion is its recognition of the premises exception which is present and accepted in a similar form in Maryland.

–Robert L. Kline, III

Crawley v. General Motors: DISPENSING WITH DISABILITY IN OCCUPATIONAL DEAFNESS CLAIMS

In *Crawley v. General Motors*, 70 Md. App. 100, 519 A.2d 1348 (1987) the Court of Special Appeals of Maryland interpreted Md. Ann. Code art. 101, § 25A (1985) to mean that a claimant's eligibility to receive benefits under workers' compensation for occupational deafness is to be determined without regard to the employee's loss of wages or his ability to perform his regular type of work. Prior to this interpretation of § 25A, an employee who suffered from a hearing impairment as a result of industrial noise had to demonstrate a loss of wages or an incapacity to perform his regular work before being eligible for workers' compensation. By dispensing with this disability requirement, the court of special appeals has increased the number of claimants who are entitled to benefits for occupational deafness. Now, a claimant has to suffer only a compensable amount of hearing loss before being eligible for workers' compensation.

For over twenty years, Douglas Crawley, Sr. had been exposed to industrial noise in the assembly division of General Motors where he worked. Alleging that he sustained a hearing loss as a result of his continued exposure to the industrial noise at General Motors, Crawley filed a claim with the Workers' Compensation Commission. The Commission determined that Crawley had sustained a compensable degree of hearing loss resulting from his employment and awarded him benefits.

General Motors appealed to the Circuit Court for Baltimore City, arguing that a "disablement" was necessary before an employee could be compensated for occupational deafness. Crawley stipulated that he had not suffered any "disablement." Relying on *Belschner v. Anchor Post Prods., Inc.*, 227 Md. 89, 175 A.2d 419 (1961), the circuit court judge reversed the commission's order of award.

The claimant in *Belschner* had been employed as a saw operator for twelve years and as a result of this employment, suffered a compensable amount of hearing loss. The claimant, however, was still performing his duties as a saw operator and did not lose any wages. The Court of Appeals of Maryland affirmed the Workers' Compensation Commission's rejection of the claim and held that worker's compensation for an employee's loss of hearing was limited by the language of § 22(a):

> Where an employee of an employer subject to this article suffers from an *occupational disease*, and is thereby *disabled* from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, and the disease was due to the nature of the occupation . . . the employee . . . shall be entitled to compensation. . . .

Md. Ann. Code art. 101, § 22(a) (1985) (emphasis added).

The court of appeals in *Belschner* also analyzed the definitions of "occupational disease" and "disablement" in reaching its conclusion. Section 67(13) defines "occupational disease" as "the event of an employee's becoming actually incapacitated, either temporarily, partially or totally, because of a disease contracted as the result of and in the course of employment." Section 67(15) defines "disablement" as "the event of an employee's becoming actually incapacitated, either partly or totally." Citing *Lumbermen's Reciprocal Ass'n v. Coody*, 278 S.W. 856 (Tex. Civ. App. 1926), the court therein held that an employee is not actually incapacitated within the intent of the law if the employee has the capacity to continue his regular employment and receives his usual rate of pay. Although *Belschner* held that disablement was a prerequisite for worker's compensation for occupational deafness, the court therein stated, "If there is a need to liberalize the law or to change what we think it plainly means, that is a legislative, not a judicial function." *Belschner*, 227 Md. at 95, 175 A.2d at 422.

In 1967, six years after the *Belschner* decision, the Maryland General Assembly enacted art. 101, § 25A entitled "Occupational deafness." The court of special appeals in *Crawley* was confronted with interpreting this section to resolve the dispute. Crawley contended that the legislature in enacting § 25A was responding to the *Belschner* court's invitation to change the law. General Motors, on the other hand, contended that the legislature intended the disability requirement of § 22(a) to apply, viewing § 25A as merely establishing highly technical criteria for measuring occupational deafness.

The court of special appeals began its inquiry of the legislative intent by examining § 25A itself. "Although the language of section 25A does not specifically state whether the General Assembly intended to eliminate disablement as a precondition of recovery for occupational deafness. Nevertheless, section 25A(a) reads 'Occupational deafness shall be compensated according to the terms and conditions of *this* section.'" *Crawley*, 70 Md. App. at 106, 519 A.2d at 1351 (emphasis in original). Concluding that the language of the section is ambiguous and not clearly revealing the legislative intent, the court examined the legislative history of the section.

After examining the legislative history of § 25A, the court concluded that the legislature not only intended to provide technical criteria for measuring loss of hearing but also intended to make occupational deafness compensable regardless of an employee's inability to work or loss of wages. In reaching such a conclusion, the court found the language of § 25A(c) significant. "By providing that a hearing loss of 15 decibels or less shall *not* constitute a compensable disability, the language employed by the Legislature implies that a hearing