

FILE COPY

22-0103

Jessica Miller
1763 Hump Mountain Road
Meadow Bridge, WV 25976

January 21, 2022



West Virginia Supreme Court of Appeals
1900 Kanawha Boulevard East
Charleston, WV 25305

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FROM FILE

To Whom it May Concern:

I am respectfully asking you to reverse the decision made by the Worker's Compensation Board of Review dated January 5, 2022, in regards to JCN 2020023628.

This claim was filed on behalf of my family by my husband's employer, Buckeye Community Hope. My husband was killed in a car accident on March 30, 2020, as he was traveling home from work. The justification stated to me by the employer is that Jonathan was still on company time while traveling home. He transported work materials such as tools, lumber, etc. Jonathan also continued to work after he arrived home. He did timesheets for employees, billing, calls with supervisors, calls with suppliers, etc. Telephone records and text messages were submitted as evidence of Jonathan's work from home. Buckeye is not protesting the claim; they initiated the claim as an act of good will toward our family.

In the appeal filed by Lisa Hunter on behalf of Traveler's Insurance, it is stated, "Injuries arising from the ordinary use of street and highways do not result from employment....unless such use is required of the employee in the performance of his duties for the employer." Ms. Hunter cited Buckland v. State

Compensation Comm'r. In contrast the decision by the Office of the Judges states, "Various nuances of the rule (coming and going) may serve to alter its application where additional evidence exists linking the employer to the accident." The decision cites the case of *Courtless v. Joliffe*. In this case, Joliffe owned his vehicle but was paid \$400 monthly, the amount of his monthly truck payment, along with maintenance and repair costs and was provided gasoline. *Carper v. Worker's Compensation* was also cited. "Worker's Compensation law generally recognizes that an employee is entitled to compensation for an injury received while traveling on behalf of his employer's business." Not only was Jonathan transporting tools and supplies for this particular job, he also was provided a credit card to use for gasoline. The road where the accident occurred is the most direct route from the job site to our residence, so Jonathan did not deviate from his normal route or make stops on his way home. *Larson's Worker's Compensation Law* states, "However, in the majority of cases involving deliberate and substantial payment for the expenses of travel....the journey is held to be in the course of employment...But in addition, there is at work the factor of making the journey part of the job, since it is a service to the employer to convey the premises of a major piece of equipment devoted to the employer's purpose." Jonathan not only transported hand tools and power tools but long ladders using ladder racks, dump trailers, walk boards, and other large items. He also hauled gravel and concrete for the jobsite using his personal vehicle. Additionally, the Office of the Judges stated, "Based on consideration of the above authorities it is concluded Mr. Miller's death occurred in the course of and as a result of his employment. The facts of this case demonstrate that the Dependents's claim is not precluded by the 'going and coming rule'. It is found that the preponderance of the evidence establishes that as a superintendent it was Mr. Miller's responsibility to transport tools on a daily basis to and from the Buckeye work site. This task was performed using his personal pickup truck. To compensate Mr. Miller for the use of his personal vehicle to accomplish this job task, Mr. Miller was provided a credit card to pay for fuel attendant to his going to and coming from the work site. Thus, it is evident that

Buckeye has determined that in order to facilitate its business as a nonprofit corporation developing and facilitating affordable housing, it was necessary to sufficiently compensate superintendents for the use of their personal vehicles in transporting needed tools, as well as the supervisors themselves, to the job site. In this regard, it is determined that the journey was part of the job." The decision also states that "...the use of superintendents' personal vehicles to transport tools to the worksite provides significant incidental benefits to the employer," ...the Dependent's claim is also compensable under the "payment for expense of travel rule," ...the Dependent's claim is also compensable under the employer's conveyance rule," and"the evidentiary record shows by preponderance that Mr. Miller would perform substantial work for Buckeye after leaving the construction site."

The Board of Review stated on page 3 that it "... finds that Mr. Miller's employer is not linked to the accident. Further, Mr. Miller's work conditions do not qualify as exceptions to the 'going and coming rule.'" However, the evidence presented to The Board of Review is directly and overwhelmingly in opposition to this statement. The evidence to be considered by the Board of Review from my husband's employers is the clear fact that his employer, Buckeye, agrees with me that he was acting within the scope of his employment. There is no disputed fact available to contradict that Buckeye filed the claim on my behalf. Buckeye has encouraged and supported this process. Buckeye has never objected to my position or offered any evidence to the contrary that established Jonathan's circumstances were outside of the exception to the rule set forth in De Constantin. The Board's opinion is simply not supported by the facts that the actual parties hereto have already agreed. _____

Regarding the Board's analysis of "major deviation and an abandonment of any business purpose," the same is unsupported by the evidence before the Board. Syllabus Point 2 of Calloway states, "... unless the deviation is so slight that the business purpose is not interrupted." There has been no evidence or testimony from Buckeye to establish the "deviation" the Board so heavily relies on as an interruption to the business purpose. Quite the contrary is the employer's support of my claim.

Based upon the evidence provided , I ask that you reverse the decision made by the Board of Review
and reinstate benefits to my family.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Miller". The signature is written in black ink and is positioned above the printed name.

Jessica Miller

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APPENDIX B – REVISED RULES OF APPELLATE PROCEDURE

WORKERS' COMPENSATION APPEALS DOCKETING STATEMENT

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Complete Case Title: Buckeye Community Hope Foundation DBA vs. Jessica Miller widow of Jonathan Miller (deceased)
 Petitioner: Buckeye Community Hope Foundation Respondent: Jessica Miller
 Counsel: Lisa Warner Hunter Counsel: _____
 Claim No.: 2020023628 Board of Review No.: 2057160
 Date of Injury/Last Exposure: 03/30/2020 Date Claim Filed: April 16, 2021
 Date and Ruling of the Office of Judges: July 14, 2021
 Date and Ruling of the Board of Review: January 5, 2022
 Issue and Relief requested on Appeal: reinstatement of benefits



CLAIMANT INFORMATION

Claimant's Name: Jonathan Miller (Jessica Miller)
 Nature of Injury: _____
 Age: 37 Is the Claimant still working? Yes No. If yes, where: _____
 Occupation: contractor No. of Years: _____
 Was the claim found to be compensable? Yes No If yes, order date: _____

ADDITIONAL INFORMATION FOR PTD REQUESTS

Education (highest): _____ Old Fund or New Fund (please circle one)
 Date of Last Employment: _____
 Total amount of prior PPD awards: _____ (add dates of orders on separate page)
 Finding of the PTD Review Board: _____

List all compensable conditions under this claim number: death
 (Attach a separate sheet if necessary)

Are there any related petitions currently pending or previously considered by the Supreme Court?
 Yes No
 (If yes, cite the case name, docket number and the manner in which it is related on a separate sheet.)

Are there any related petitions currently pending below? Yes No
 (If yes, cite the case name, tribunal and the manner in which it is related on a separate sheet.)

If an appealing party is a corporation an extra sheet must list the names of parent corporations and the name of any public company that owns ten percent or more of the corporation's stock. If this section is not applicable, please so indicate below.

The corporation who is a party to this appeal does not have a parent corporation and no publicly held company owns ten percent or more of the corporation's stock.

Do you know of any reason why one or more of the Supreme Court Justices should be disqualified from this case? Yes No
 If so, set forth the basis on an extra sheet. Providing the information required in this section does not relieve a party from the obligation to file a motion for disqualification in accordance with Rule 33.