STATE OF MICHIGAN

COURT OF APPEALS

BUDDY A. LEWIS, SR., deceased,

Plaintiff-Appellee,

v

LEXAMAR CORP., ZURICH AMERICAN INSURANCE CO., and GALLAGHER BASSETT SERVICES,

Defendants-Appellants.

UNPUBLISHED
December 17, 2020

No. 350247
Michigan Compensation Appellate Commission
LC No. 18-000008

Before: BOONSTRA, P.J., and GADOLA and TUKEL, JJ.

PER CURIAM.

Defendants appeal on leave granted the order of the Michigan Compensation Appellate Commission (MCAC), which affirmed the order of the Workers' Compensation Board of Magistrates. The magistrate's order awarded workers' compensation benefits to plaintiff, Buddy A. Lewis, Sr. (Lewis), deceased. The magistrate concluded that Lewis's death arose out of and in the course of his employment with LexaMar and therefore was compensable under Michigan's workers' compensation law. We reverse.

I. FACTS

At the time of his death, Lewis was employed by defendant LexaMar, an automotive trim factory in Boyne City. LexaMar offers its employees an education assistance/tuition reimbursement benefit. LexaMar's Employee Handbook states that an employee is eligible to participate in the tuition reimbursement program if the employee is "interested in pursuing a career in a technical field of study or in a field of study that can be directly related to our manufacturing environment." Although the tuition reimbursement is limited to $1,500 in any calendar year, an employee may request additional reimbursement. The Employee Handbook states that an employee who receives additional reimbursement will be required to make a contractual commitment to stay at LexaMar after completion of the education program.

In 2013, Lewis was working in LexaMar's tool room as a specified tool worker when LexaMar's human resources director, Breen Merriam, approached Lewis about enrolling in Kirtland Community College's Magnatronics program. After some negotiation about how much of the cost would be covered by LexaMar, Lewis agreed to enroll, and LexaMar agreed to pay for the entire tuition for the program. Although Merriam was aware that the tuition exceeded the standard employee education reimbursement limit, LexaMar did not require Lewis to sign an agreement for tuition repayment, and did not require Lewis to commit to continue working at LexaMar.

Lewis began classes at the college in 2013, while continuing to work full time for LexaMar on the night shift. Lewis typically drove to the college campus for class after completing his LexaMar shift; his classes were about a 40-minute drive from the LexaMar facility. Lewis completed three semesters in the college's Magnatronics program, then in 2014 switched to the college's Welding and Fabrication program.

At 8:00 a.m. on September 9, 2015, Lewis clocked out of LexaMar after working a full shift. He sent a text message to his wife, informing her that he was going to class. While driving to the class, Lewis's car crossed the centerline of the road and collided with a tractor-trailer. Lewis was killed in the collision.

Lewis's wife, Patricia, filed a petition for workers' compensation benefits, and defendants opposed the benefits. At trial, the primary issue was whether Lewis's death arose out of and in the course of his employment. At the hearing before the magistrate, Patricia testified that she was with Lewis on a lunch break in 2013 when Merriam first talked with Lewis about the college classes. Patricia testified that Merriam told Lewis that LexaMar wanted Lewis to attend the college classes as a test run to enable LexaMar to determine whether it would be more efficient to send employees to college classes or to bring the college instructors to LexaMar. Patricia further testified that initially Merriam indicated that Lewis would have to pay the tuition in advance, and that LexaMar would reimburse one-half of the tuition amount; Lewis declined that financial arrangement. LexaMar later offered to pay all of Lewis's tuition directly to the college, and Lewis agreed to that arrangement. Patricia testified that LexaMar promised Lewis a pay raise upon completion of the college program.

By contrast, Merriam testified that LexaMar did not promise Lewis a pay raise or a promotion upon completion of the college program. Merriam confirmed that LexaMar paid Lewis's college tuition and fees in full, totaling approximately $13,685 at the time of Lewis's death. He further testified that he "encouraged" Lewis to enroll in the Magnatronics program, but that he did not "strongly encourage" Lewis to enroll. He testified that "I encouraged him to take the Magnatronics as I did other employees who were in the area of maintenance and in development programs." Merriam also testified that he did not encourage Lewis to take the welding class specifically. He acknowledged that some of the work in the tool room required precision welding, that LexaMar had only one employee (not Lewis) qualified to do the precision welding, and that Lewis used some of the knowledge he learned in the college classes during his work at LexaMar.

The magistrate issued an opinion granting workers' compensation benefits to Lewis's estate. The magistrate found that Lewis's enrollment at the college provided a benefit to LexaMar

because LexaMar currently had only one certified welder in the tool room. The magistrate also found an additional benefit to LexaMar because Lewis was a test case to determine whether it was more beneficial to send its employees to school rather than to bring trainers to LexaMar. The magistrate also found that Lewis's travel to the college placed him in peril. The magistrate concluded that Lewis's estate was entitled to workers' compensation benefits, holding in relevant part:

> Petitioner proved by a preponderance of the evidence that his injuries and death arose out of and in the course of his employment on September 9, 2015. He established a sufficient nexus between his business travel and his employment, his business travel directly benefitted his employer, his travel was required and supported by his employer and constituted a special mission as defined and described by Michigan law.

Defendants appealed the magistrate's decision to the MCAC, which affirmed and expressly adopted the magistrate's opinion and order. Thereafter, defendants sought leave to appeal to this Court, which this Court granted.[1]

II. DISCUSSION

A. STANDARD OF REVIEW

This Court reviews de novo questions of law involved in a final order of the MCAC. MCL 418.861a(14); *Arbuckle v General Motors LLC*, 499 Mich 521, 531; 885 NW2d 232 (2016). A decision of the MCAC is subject to reversal if it is based on "erroneous legal reasoning or the wrong legal framework." *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401-402; 605 NW2d 300 (2000). In the absence of fraud, factual findings of the MCAC are conclusive if there is any competent evidence in the record supporting the findings. MCL 418.861a(14); *Omer v Steel Technologies, Inc*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 344310); slip op at 6.

B. SCOPE OF MCAC REVIEW

Defendants contend that in reviewing the decision of the magistrate in this case the MCAC failed to conduct a qualitative or quantitative analysis of the record as required by MCL 418.861a(13), failed to make specific findings, and failed to reference the statutory framework that it applied. We disagree.

When reviewing a decision of a workers' compensation magistrate, the MCAC is required to conduct a review that includes "both a qualitative and quantitative analysis of th[e] evidence in order to ensure a full, thorough, and fair review." MCL 418.861a(13). The MCAC's review of the magistrate's decision is not de novo. *Omer*, ___ Mich App at ___; slip op at 5. Rather, the MCAC reviews the factual findings of the workers' compensation magistrate under the

[1] *Lewis v LexaMar Corp*, unpublished order of the Court of Appeals, entered January 2, 2020 (Docket No. 350247).

"substantial evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 698; 614 NW2d 607 (2000). The magistrate's findings of fact are to be considered conclusive by the MCAC if the findings are "supported by competent, material, and substantial evidence on the whole record." MCL 418.861a(2); *Omer*, ___ Mich App at ___; slip op at 5. Substantial evidence is defined as "such evidence, considering the whole record, as a reasonable mind will accept as adequate to justify the conclusion." MCL 418.861a(3).

The MCAC may adopt, in whole or in part, the order and opinion of the magistrate. MCL 418.861a(10). The MCAC may not substitute its own factual findings for those of the magistrate unless a "qualitative and quantitative analysis" of the record dictates a different result; if the MCAC determines that the magistrate's decision was not supported by substantial evidence, the MCAC may make independent factual findings. *Mudel*, 462 Mich at 699-700. The role of the MCAC is "to ensure that factual findings are supported by the requisite evidence, while the role of the judiciary is to ensure the integrity of the administrative process." *Id*. at 701.

Here, the MCAC expressly adopted the magistrate's opinion, stating as follows, in relevant part:

> [A]fter a comprehensive review of the record, and finding no legal error, pursuant to MCL 418.861a(10), **we adopt in whole, the opinion and order of the magistrate**, mailed January 11, 2018, as the opinion and order of the Commission. [Emphasis added.]

The MCAC also recited the correct legal framework for its review, stating:

> First, we examine the magistrate's fact findings under the competent, material, and substantial evidence standard. MCL 418.861a(3). We must review the entire record. MCL 418.861a(4). The review must include both a qualitative and quantitative analysis of the evidence. MCL 418.861a(13). After our review of the record, we must determine whether a reasonable person would find the evidence adequate to support the magistrate's findings.

The MCAC opinion further notes that the MCAC defers to the magistrate's determination of the credibility of the witnesses, and reviews the magistrate's application of the law de novo.

Although the MCAC did not present legal analysis apart from that of the magistrate, the magistrate's opinion presented detailed analysis and the MCAC specifically concluded that the magistrate's reasoning was correct and adopted the magistrate's opinion as permitted by statute. See MCL 418.861a(10). The MCAC stated in its opinion, in relevant part:

> We find the defendants' argument in [their] brief unpersuasive. Arising out of and in the course of cases are determined on the very specific facts of each case. Those facts are identified and assigned weight by the magistrate. The defendants ask us to accept an alternative analysis of an alternative set of facts that were considered by the magistrate and rejected. We also find that the magistrate did a thorough application of the correct law to this specific fact pattern and arrived at a well reasoned result. As we have oft noted in the past, the test is not whether some

alternate outcome could be supported by the record, but rather was the outcome as propounded by the magistrate supported by the record. In this case, it is.

We therefore conclude that the MCAC's review was sufficient to discharge its statutory obligation.

C. COURSE OF EMPLOYMENT

Defendants also contend that the MCAC erred as a matter of law when it determined that Lewis's death occurred within the course of his employment. We agree.

Under the Worker's Disability Compensation Act of 1969 (WDCA), MCL 418.101 *et seq*., "[a]n employee who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of injury, shall be paid compensation as provided in this act." MCL 418.301(1). To be entitled to benefits under the act, the employee must establish by a preponderance of the evidence that the injury was work-related. *Rakestraw v Gen Dyamics Land Sys, Inc*, 469 Mich 220, 230; 666 NW2d 199 (2003). An employee is entitled to compensation when "the nexus between the employment and the injury is sufficient to conclude that the injury was a circumstance of employment." *Smith v Chrysler Group, LLC*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 339705); slip op at 2 (quotation marks and citation omitted). When the facts are undisputed, whether the employee's injury arose out of and in the course of employment is a question of law. *Smith*, ___ Mich App at ___; slip op at 2, citing *Zarka v Burger King*, 206 Mich App 409, 411; 522 NW2d 650 (1994). Conversely, if the facts are disputed the question may be a mixed question of fact and law. *Id*.

"An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment." MCL 481.301(3). However, injuries sustained by an employee going to or coming from work generally are not compensable under the WDCA. *Smith*, ___ Mich App at ___; slip op at 2. Exceptions to this general rule exist, and the circumstances in which an employee's injuries are compensable, even though incurred when traveling to or from work, have been summarized as follows:

> (1) the employee is on a special mission for the employer, (2) the employer derives a special benefit from the employee's activity at the time of the injury, (3) the employer paid for or furnished employee transportation as part of the employment contract, (4) the travel comprised a dual purpose combining employment-related business needs with the personal activity of the employee, (5) the employment subjected the employee to excessive exposure to traffic risks, or (6) the travel took place as a result of a split-shift working schedule or employment requiring a similar irregular nonfixed working schedule. [*Id*. (quotation marks and citations omitted).]

The exceptions are not a balancing test or a list of requirements; rather, fitting within any one of the exceptions is alone enough to cause a sufficient nexus to render the injury compensable. *Smith*, ___ Mich App at ___; slip op at 3-4. When an employee incurs injuries under any of the above circumstances, the injuries are compensable because the nexus between the injury and the employment is sufficient to cause the injury to be a circumstance of the employee's employment.

Id. at ___; slip op at 2, citing *Bowman v R L Coolsaet Constr Co (On Remand)*, 275 Mich App 188, 191; 738 NW2d 260 (2007). The six exceptions therefore should each be considered separately. *Smith*, ___ Mich App at ___; slip op at 4.

In this case, the magistrate held that plaintiff proved by a preponderance of the evidence that Lewis's death arose out of and in the course of his employment, and therefore was compensable under the WDCA. The magistrate concluded that the petitioner had

> established a sufficient nexus between [Lewis's] business travel and his employment, his business travel directly benefitted his employer, his travel was required and supported by his employer and constituted a special mission as defined and described by Michigan law.

The magistrate, and thus the MCAC by its adoption of the magistrate's opinion, concluded that Lewis was within the course of his employment because he was on a special mission for LexaMar at the time of his death, LexaMar derived a special benefit from Lewis's activity at the time of his death, and LexaMar placed Lewis in danger by requiring the travel. In arriving at these conclusions, the magistrate in this case, as did the magistrate in *Smith*, appears to have assumed that the exceptions outlined above are factors of a balancing test. The magistrate explained, relying upon two earlier cases of this Court, as follows, in pertinent part:

> *Stark* [*v L E Myers Co*, 58 Mich App 439; 228 NW2d 411 (1975)], a 1975 case, was followed by *Forgach v George Koch & Sons Co*., 167 Mich App 50, 421 NW2d 568 (1988), a 1988 case. These cases offer a four part test: (1) whether the employer paid for or furnished employee transportation; (2) whether the injury occurred during or between working hours; (3) whether the employer derived a special benefit from the employee's activities at the time of the injury and (4) whether the employment subjected the employee to excessive exposure to traffic risks.
>
> In *Camburn v Northwest School District*, 220 Mich App 358, 559 NW2d 370 (1997), the court of appeals offered a two part test: (1) was the employer directly benefitted by the employee's attendance; and (2) was attendance compulsory or at least definitely urged or expected as opposed to merely encouraged.

Nonetheless, the magistrate essentially concluded that Lewis fell within two of the exceptions to the coming and going rule, finding that (1) Lewis was on a special mission for LexaMar at the time of his death, and (2) LexaMar derived a special benefit from Lewis's activity at the time of his death. The magistrate also relied upon his conclusion that LexaMar required or strongly encouraged Lewis's activity. The question then is whether the facts found by the magistrate and adopted by the MCAC support the legal conclusion that Lewis's journey to his welding class on the day of his death fits within any one of the exceptions and therefore forms a nexus to his employment sufficient to render his death compensable.

In this case, most of the facts are undisputed. Lewis was an employee of LexaMar who worked as a specified tool worker. On the day of his accident, he had finished his shift for the day

and clocked out of work. He was driving to a welding class at a nearby college about 40 minutes away. The class was being paid for by LexaMar, but Lewis was not required by LexaMar to take the class, Lewis was not being paid to attend the class, and he was not being compensated for his transportation costs. Although Lewis did not work as a welder, there was only one certified welder in his department, and potentially it would have been beneficial to LexaMar if Lewis had become certified as a welder.

The only factual dispute appears to be the extent to which LexaMar encouraged Lewis to take college classes. Patricia Lewis testified that Lewis had been encouraged by LexaMar's human resources director, Merriam, to take the classes, and that Merriam had told Lewis that he would receive a raise upon completing the classes. She described how Lewis had successfully negotiated with Merriam to have LexaMar pay the entire tuition cost. Patricia also testified that Merriam had explained that LexaMar wanted Lewis to take the Magnatronics course to determine whether it was more cost effective to send employees to the college for training or to have instructors travel to LexaMar's factory. By contrast, Merriam testified that he had encouraged Lewis to attend the Magnatronics course, but had not strongly encouraged him. He also testified that the welding class Lewis planned to attend that day was not part of the course of study he had encouraged Lewis to pursue. Merriam also denied that Lewis had been promised a salary increase upon completion of the classes.

The treatise Larson, Workers' Compensation Law, discusses the general rule regarding compensability of injuries related to educational programs away from work. The treatise identifies a distinction between employee education that is "definitely urged" and education that is "merely encouraged," as follows:

> As to attendance at conventions, institutes, seminars, and trade expositions, compensability similarly turns on whether the claimant's contract of employment contemplated attendance as an incident of the work. It is not enough that the employer would benefit indirectly through the employee's increased knowledge and experience. . . .
>
> The clearest case for coverage is that of a teacher who is directed to attend a teacher's institute. It is also sufficient if attendance, although not compulsory, is "definitely urged" or "expected," but not if it is merely "encouraged." Connection with the employment may also be bolstered by the showing of a specific employer benefit, as distinguished from a vague and general benefit, as when the attendance of an automobile mechanic at an examination given by the manufacturer permitted the dealer to advertise "factory-trained mechanic." [Larson, Workers' Compensation Law § 27.03(1)(c)(2019).]

Our Supreme Court cited this treatise in *Camburn v Northwest Sch Dist (After Remand)*, 459 Mich 471, 478; 592 NW2d 46 (1999). There, the employee-teacher was injured in an auto accident while driving to a school-sponsored seminar during work hours. The Court determined that the teacher's injuries were not compensable under workers' compensation law because the school district neither required nor expected the teacher to attend the seminar. *Id.* The Court reasoned that although the school district could benefit from the teacher's attendance at the seminar

that benefit to the school district was insufficient to conclude that the teacher was injured in the course of her employment. The Court explained,

> Even if [the school district] was directly benefited by [the teacher's] intent to attend the seminar, substantial evidence supports the magistrate's conclusion that attendance was neither compulsory nor definitely urged or expected. Instead, it was merely encouraged, and, as such, was not an incident of employment. Therefore, plaintiff's injury did not arise out of and in the course of her employment. [*Camburn*, 459 Mich at 478.]

The Court in *Camburn* also examined the exceptions to the general rule of non-compensability, but concluded in that case that the teacher's injuries were not compensable because her travel did not fall within the exceptions. *Id*. at 479.

More recently, in *Smith* this Court concluded that the employee plaintiff was within the course of his employment when he was injured in a car accident while driving from his home to one of the defendant employer's plants to conduct an audit. *Smith*, ___ Mich App at ___; slip op at 4. This Court reasoned that it was the plaintiff's job to travel to different locations to conduct audits and that his employer had directed him to drive to that location to perform his work. *Id*. This Court concluded that the first and third exceptions applied because the plaintiff had been on a special mission for his employer and also because the employer had reimbursed the plaintiff's expenses to travel to that location and other locations to perform his job duties. *Id*. at ___; slip op at 5.

In this case, the magistrate concluded that rather than *Camburn*, this case is directly analogous to this Court's earlier opinion in *Ream v L E Myers Co*, 72 Mich App 238; 249 NW2d 372 (1976). The employee in *Ream* had been assigned to a job site for a two-week trial period to determine whether the employee was capable of being a foreman. *Id*. at 240. While driving home from the job site, the employee was in an auto accident. This Court affirmed the workers' compensation agency decision that the employee's injuries from the auto accident were compensable. The Court reasoned that the two-week trial was a temporary, special assignment "at the direction of and for the benefit of the employer." *Id*. at 243. This Court explained:

> This change in nature and location of plaintiff's job represented a temporary, special assignment which plaintiff undertook; it was outside the normal performance of plaintiff's duties, and it clearly represented a special benefit to the defendant. Defendant needed a replacement foreman and it also needed to test employees for advancement. Plaintiff's commuting to and from the new, temporary job site was inherently a part of this special benefit to his employer. It was outside the scope of his regular duties in the performance of his work for the defendant. [*Id*. at 242.]

Here, the magistrate initially determined that like the employer in *Ream*, the employer had ordered Lewis to travel for classes, concluding as follows:

> *By ordering Mr. Lewis to travel to Gaylord for training*, instead of bringing the trainers to Boyne City, LexaMar necessitated substantially more travel to and

> from work and created a special assignment which represented a special benefit to LexaMar. The travel to Gaylord was inherently a part of the special benefit to LexaMar just as Mr. Ream's travel to Midland was a special benefit to LE Myers. Just as the required travel placed Mr. Ream at the point of peril, the required travel at the end of a ten hour third shift placed Mr. Lewis at the point of peril. As in *Ream*, "it follows that Mr. Lewis was on a 'special mission' at the direction of and for the benefit of" his employer when he died. [Emphasis added.]

The magistrate later recognized, however, that LexaMar had not expressly ordered the travel, observing that "Mr. Lewis was not 'ordered' to attend college classes, he was enticed by the offer of free education and job advancement. This is what put Mr. Lewis on the southeast road." The magistrate also found that LexaMar benefitted by using Lewis to test whether it was better to bring educators to LexaMar or to send employees to college classes. In addition, the magistrate found that the employer would benefit by having a second person trained as a precision welder. The magistrate concluded that LexaMar had strongly encouraged Lewis to take the college training, and that the strong encouragement, combined with the benefit to LexaMar, demonstrated a sufficient nexus between the college training and the employment to make the accident compensable.

Defendants argue that the magistrate erred by relying on *Ream*, and that two facts distinguish Lewis from the employee in *Ream*: (1) Lewis was not traveling to a worksite, and (2) Lewis was not required to enroll in the college program. Defendants correctly assert that in analogizing *Ream*, the magistrate made factual findings unsupported by the record. The magistrate in this case found that LexaMar changed the nature of Lewis's work by transitioning him from a tool room worker to a certified welder in training. This does not appear to be supported in the record. To the contrary, Lewis's wife testified that Lewis's job stayed the same from the date he started the college program until the day he died. Furthermore, Lewis undertook the welding program at his own volition. LexaMar had encouraged him to pursue the program in Magnatronics.

The magistrate also found that LexaMar required Lewis to change the location of his job, which in turn necessitated substantially more travel to and from work. This finding rests on the unsupported premise that attending the welding class was an additional job location for Lewis. The record demonstrates that attending the welding class was not part of Lewis's job. While taking the college classes, Lewis nonetheless worked full shifts; time spent by Lewis attending the college classes was not considered by LexaMar to be hours worked. On the day of the accident, Lewis completed his shift and clocked out from work before traveling to the class. LexaMar did not pay Lewis to attend the class that day and did not pay Lewis mileage to travel to the class. Although LexaMar paid the tuition for the class, LexaMar did not require Lewis to take the class and the welding class he was attending that day was not part of the program the company had encouraged Lewis to enroll in. Unlike the employee in *Smith* who was traveling to a jobsite to conduct an audit on behalf of his employer as part of his employment, see *Smith*, ___ Mich App at ___; slip op at 4, Lewis was on his way to a welding class after completing his shift that day. Thus, there were no facts presented in the record to support the magistrate's finding that the college classroom was a "job location" where Lewis was expected to perform job duties on behalf of LexaMar.

The magistrate also found that LexaMar "strongly encouraged" Lewis to attend the class because at Lewis's request they agreed to pay his full tuition. The record demonstrates that LexaMar provided an incentive for all employees to take classes by offering employees $1,500 per year toward tuition, and potentially more if agreed to by LexaMar. In Lewis' case, LexaMar agreed to cover the full amount of the tuition. The magistrate concluded that LexaMar thereby enticed or tempted Lewis so much that it rose to the level of "strong encouragement," and as a result the class was essentially compulsory and Lewis was thus within the course of his employment when driving to the class.

When the facts are undisputed, whether an employee's injury arose out of and in the course of employment is a question of law. *Smith*, ___ Mich App at ___; slip op at 2. Here, the magistrate's finding of "strong encouragement" is a legal conclusion that expands existing caselaw. Neither *Smith*, *Camden*, nor *Ream* support the legal conclusion that an employer's offer of the fringe benefit of free education, no matter how tempting, is the equivalent of compelling the employee to participate in the offered education as part of the employee's job duties. Rather, the facts in this case are more closely analogous to the facts in *Camburn*, in which our Supreme Court held that the employee's injuries were non-compensable. As in *Camburn*, the employer in this case arguably received a benefit when Lewis gained classroom knowledge that could be used at work and also by trying the method of having employees travel to the college for instruction. However, the fact that an employer someday may benefit from an employee's training is insufficient to trigger worker's compensation coverage and does not rise to the level of a "special mission" for the employer, or to the employer deriving a "special benefit" at the time of the employee's injury. *Camburn*, 459 Mich at 478; *Smith*, ___ Mich App at ___; slip op at 2.

In sum, the magistrate's determination that there was a sufficient nexus between Lewis's death and his employment to support the legal conclusion that his death arose in the course of his employment is erroneous. Absent a sufficient nexus between Lewis's death and his employment, the magistrate and the MCAC erred by concluding that Lewis's death was compensable.[2]

Reversed.

/s/ Mark T. Boonstra
/s/ Michael F. Gadola
/s/ Jonathan Tukel

[2] Although we sympathize with Lewis's family in light of his tragic death, our decision in this matter is compelled by our application of the law.