

Order

Michigan Supreme Court
Lansing, Michigan

April 1, 2022

Bridget M. McCormack,
Chief Justice

162692

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

BUDDY A. LEWIS, SR., Deceased,
Plaintiff-Appellant,

v

SC: 162692
COA: 350247
MCAC: 18-000008

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

On January 12, 2022, the Court heard oral argument on the application for leave to appeal the December 17, 2020 judgment of the Court of Appeals. On order of the Court, the application is again considered. Pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. The standard of review for decisions from the Michigan Compensation Appellate Commission (MCAC) is generally deferential. While questions of law are reviewed de novo, *Arbuckle v Gen Motors, LLC*, 499 Mich 521, 531 (2016), the MCAC’s factual findings should be affirmed so long as there is competent evidence in the record to support them. *Omer v Steel Technologies, Inc*, 332 Mich App 120, 134 (2020). See also MCL 418.861a(14) (“The findings of fact made by the commission acting within its powers, in the absence of fraud, shall be conclusive.”). Based on those factual findings, the MCAC found that plaintiff’s injury was compensable under the Worker’s Disability Compensation Act of 1969 (WDCA), MCL 418.101 *et seq*.

Despite the Court of Appeals’ judgment to the contrary, we too conclude that plaintiff’s injury is compensable because it “ar[ose] out of and in the course of employment.” MCL 418.301(1). As we explained in *Camburn v Northwest Sch Dist (On Remand)*, 459 Mich 471, 477 (1999), compensability in this circumstance turns on whether attendance is an “incident of . . . work.” That depends on whether the employer would receive a direct benefit and whether attendance is required or at least definitely urged. *Id.*, citing 1A Larson, Workmen’s Compensation Law, pp 5-397 to 5-403. See also *Marcotte v Tamarack City Volunteer Fire Dep’t*, 120 Mich App 671, 678 (1982).

Such is the case here. There is competent record evidence that defendant Lexamar Corp (1) used plaintiff as a test case to determine whether to send employees to the community college for their vocational classes or whether to bring instructors to the employees and (2) definitely urged plaintiff to attend the vocational classes.

Yet plaintiff was injured not at the class that was incident to work, but on the commute. While injuries occurring on an employee's commute are generally not compensable under the act, there is an exception when "the employer derives a special benefit from the employee's activity at the time of the injury." *Smith v Chrysler Group, LLC*, 331 Mich App 492, 495 (2020), quoting *Bowman v R L Coolsaet Constr Co (On Remand)*, 275 Mich App 188, 191 (2007). Again, because Lexamar Corp used plaintiff as a test case, it derived a special benefit from plaintiff's pursuit of his education, and plaintiff is entitled to compensation under the WDCA. We therefore REINSTATE the July 18, 2019 order of the MCAC affirming the decision of the magistrate.

ZAHRA, J., would deny leave to appeal.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 1, 2022

Clerk