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# SCOTT A. WHITE *v.* WATERBURY FIRE DEPARTMENT ET AL.
(AC 45589)

Bright, C. J., and Seeley and Bishop, Js.

*Syllabus*

The plaintiff firefighter appealed to this court from the decision of the Compensation Review Board, which affirmed the decision of the Workers' Compensation Commissioner that the plaintiff was not entitled to benefits for injuries he sustained when he fell leaving his home while carrying work gear to work an overtime shift. The plaintiff had agreed to work the overtime shift at a fire station different from the one at which he worked his regular shift. At the conclusion of his regular shift, the plaintiff took certain of his work gear home with him so he would not have to stop at his regular work location to pick it up before going to the overtime shift. The defendant employer neither directed nor requested that the plaintiff bring his work gear home prior to working the overtime shift. The commissioner determined that the plaintiff's injuries did not arise out of or in the course of his employment, reasoning, inter alia, that bringing the work gear home was not a necessary activity that was incidental to the plaintiff's employment or that benefited the defendant but, rather, that the plaintiff brought the work gear home for his sole benefit and convenience. *Held* that the board properly affirmed the commissioner's decision that the plaintiff's injuries were not compensable pursuant to statute (§ 31-275 (1) (E)) because they occurred at his abode as a result of a preliminary act in preparation for work that was not directed or requested by the defendant; moreover, contrary to the plaintiff's contention that the defendant was aware that it was common practice for its employees to bring their work gear home, that did not mean that his doing so was mutually beneficial to both parties and, therefore, compensable; furthermore, his claim that he would have been unable to perform his job as a firefighter had he not brought the work gear home was belied by the commissioner's factual findings, which the plaintiff did not challenge.

Argued March 8—officially released April 11, 2023

*Procedural History*

Appeal from the decision of the Workers' Compensation Commissioner for the Fifth District denying the plaintiff's claim for benefits, brought to the Compensation Review Board, which affirmed the commissioner's decision, and the plaintiff appealed to this court. *Affirmed.*

*Justin A. Raymond*, for the appellant (plaintiff).

*Daniel J. Foster*, corporation counsel, for the appellees (defendants).

*Opinion*

BRIGHT, C. J. The plaintiff, Scott A. White, appeals from the decision of the Compensation Review Board (board) affirming the denial of his claim for benefits by the Workers' Compensation Commissioner for the Fifth District (commissioner).[1] The plaintiff, a firefighter for the named defendant, the Waterbury Fire Department,[2] argues that the commissioner and the board erred in concluding that the plaintiff was not entitled to workers' compensation benefits because he was not engaged in an activity for the mutual benefit of both himself and the defendant when he was injured as he left his home to go to work. We affirm the decision of the board.

The following facts, as found by the commissioner and which are not challenged on appeal, and procedural history are relevant to our analysis. On the morning of March 22, 2020, Rick Hart, a deputy chief of the Waterbury Fire Department, asked the plaintiff if he would work an overtime shift that night, beginning at 8 p.m., at the city's Station 5 firehouse. The plaintiff's regular assignment was at Station 2. The plaintiff agreed to work the overtime shift.[3] When leaving Station 2 that morning at the conclusion of his shift there, he gathered his turnout gear, placed it in a large duffel bag, and took it home with him. The gear included items necessary for the plaintiff to perform his firefighting duties, including boots, pants, a coat, a helmet and gloves. The bag weighed approximately fifty pounds and resembled a bag used to carry hockey equipment. The plaintiff brought his gear home so that he could drive directly to Station 5, rather than having to stop at Station 2 on his way to his overtime shift. He neither was directed nor asked by any superior officer to take his gear home, and he had the option of leaving the gear at Station 2 and picking it up there before going to Station 5 for the overtime shift.

Once he arrived at his home, the plaintiff took the bag with his gear from his car into his house. He did not leave the gear in his car because it was filthy, and he wanted to avoid the odor it would leave in the car. In addition, the gear was worth approximately $5000, and the plaintiff would be financially responsible for it if it were stolen. At approximately 6:30 p.m. that evening, while leaving for his overtime shift, the plaintiff fell down the stairs outside the entrance to his first floor residence when his "turnout gear bag he was carrying struck him after closing the door from his apartment, causing him to fall down his front stairs, injuring his right leg." The plaintiff was diagnosed to have suffered "a minimally displaced tibial plateau fracture" of his right leg as a result of the fall. The plaintiff "opted for nonsurgical treatment, including physical therapy, stretching, and strength training. He was able to return to work in a light-duty capacity on April 11, 2020. He

worked [forty] hours per week performing 'clerical work, sitting at a desk' until he was cleared for full-duty work on July 15, 2020. [The plaintiff] still wears a hinged knee brace that allows him to remain working full duty, including overtime assignments."[4]

The plaintiff sought workers' compensation benefits for his injuries. The defendant disputed the claim, arguing that the plaintiff's fall did not occur during the course of his work. An evidentiary hearing was held before the commissioner on March 22, 2021, following which the parties filed proposed findings of fact and the record was closed. On August 31, 2021, the commissioner issued his ruling denying and dismissing the plaintiff's claim. The commissioner concluded that, although the plaintiff was credible, "the facts do not support a finding that the incident of March 22, 2020, occurred in the course and scope of his employment." Central to the commissioner's conclusion were his findings that:

"[T]he primary reason the [plaintiff] brought his gear home prior to working the overtime shift on March 22, 2020, was to shorten his commute to work that night. I find that this was for the sole benefit and convenience of the [plaintiff]. There was no evidence presented indicating that the [plaintiff would] not be able to arrive for his overtime assignment on time had he driven to his normal firehouse and gathered his turnout gear before travelling to Station 5. . . .

"[T]here was no evidence presented that the [defendant] . . . received any benefit from the [plaintiff's] decision to carry his turnout gear home prior to his extra-duty assignment. The [plaintiff] was responsible for arriving at this overtime shift timely, without regard to how he transported his turnout gear to the assignment. The evidence supports a finding that the firefighters themselves found this practice convenient and that it had no mutually beneficial impact on performing their overtime shift, including impacting their arrival time. . . .

"[The plaintiff] was not directed by any of his superiors to bring his turnout gear bag home with him prior to working the overtime shift on March 22, 2020. . . .

"[The plaintiff] was not injured on March 22, 2020, while in the process of performing a necessary activity incidental to his employment with the [defendant] or for the joint benefit of himself and the [defendant]. *Spatafore* v. *Yale University*, 239 Conn. 408, [684 A.2d 1155] (1996)."[5]

The plaintiff appealed to the board, claiming that the commissioner improperly determined that his injuries did not arise out of and in the course of his employment. He argued that he brought his turnout gear home so that he could properly perform his functions as a firefighter for the defendant, and, consequently, his "car-

rying of his turnout gear at the time of his injury was for the mutual benefit of himself and his employer."[6] The board affirmed the decision of the commissioner. It described the plaintiff's bringing of his turnout gear home as a " 'preliminary act' " that would not give rise to a claim for workers' compensation benefits unless it was undertaken at the direction or request of the defendant.[7] The board then reviewed the record before the commissioner and held that the commissioner "had a basis in the testimony on the record to support his conclusion that the [plaintiff] was not directed or compelled to bring his gear bag home but, rather, chose to do this, as it was personally convenient." Accordingly, the board concluded that the plaintiff had failed to prove that bringing his turnout gear to his home conveyed any benefit to the defendant and that the plaintiff's reliance on the mutual benefit doctrine failed. This appeal followed.

The plaintiff's sole claim on appeal is that the board erred as a matter of law in concluding that his injuries did not arise out of an activity incidental to his employment that was for the mutual benefit of both parties. The defendant argues that application of the mutual benefit doctrine turns on the commissioner's factual finding of whether the plaintiff's bringing home of the turnout gear was done to benefit the defendant. It argues that, because the commissioner found that it was not done to benefit the defendant, and the plaintiff has never challenged that finding, there was no basis for the board to reverse the commissioner's decision. We agree with the defendant.

We begin with our standard of review and the relevant legal principles. A party aggrieved by a commissioner's decision to grant or deny an award may appeal to the board pursuant to General Statutes (Rev. to 2021) § 31-301.[8] "The board is obliged to hear the appeal on the record and not retry the facts. . . . [T]he power and duty of determining the facts rests on the commissioner, the trier of facts. . . . The conclusions drawn by him from the facts found must stand unless they result from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them. . . . Our scope of review of the actions of the board is similarly limited. . . . The role of this court is to determine whether the . . . [board's] decision results from an incorrect application of the law to the subordinate facts or from an inference illegally or unreasonably drawn from them." (Citation omitted; footnote in original; internal quotation marks omitted.) *Brown* v. *United Technologies Corp.*, 112 Conn. App. 492, 496–97, 963 A.2d 1027 (2009), appeal dismissed, 297 Conn. 54, 997 A.2d 478 (2010). "The determination of whether an injury arose . . . in the course of employment is a question of fact for the commissioner. . . . [I]n determining whether a particular injury arose out of and in the course of employment, the [commis-

sioner] must necessarily draw an inference from what he has found to be the basic facts. The propriety of that inference, of course, is vital to the validity of the order subsequently entered. But the scope of judicial review of that inference is sharply limited . . . . If supported by evidence and not inconsistent with the law, the [commissioner's] inference that an injury did or did not arise out of and in the course of employment is conclusive. No reviewing court can then set aside that inference because the opposite one is thought to be more reasonable; nor can the opposite inference be substituted by the court because of a belief that the one chosen by the [commissioner] is factually questionable." (Citation omitted; internal quotation marks omitted.) *Daubert* v. *Naugatuck*, 267 Conn. 583, 590, 840 A.2d 1152 (2004).

The plaintiff has the burden of proving that his injury arose out of his employment and in the course of his employment. See *McNamara* v. *Hamden*, 176 Conn. 547, 550, 398 A.2d 1161 (1979). General Statutes § 31-275 (1) (E) provides: "A personal injury shall not be deemed to arise out of the employment if the injury is sustained: (i) At the employee's place of abode, and (ii) while the employee is engaged in a preliminary act or acts in preparation for work unless such act or acts are undertaken at the express direction or request of the employer . . . ." In the present case, there is no dispute that the plaintiff's injury occurred at his place of abode. Furthermore, the commissioner found that the defendant neither directed nor requested that the plaintiff bring his turnout gear home.

The plaintiff does not challenge these findings, and the board concluded that they were supported by the evidence presented to the commissioner. Nevertheless, the plaintiff argues that it was common practice for employees of the defendant to bring their turnout gear home, the defendant was aware of the practice, and "the purpose of carrying the bag of turnout gear was for [the plaintiff] to appropriately and dutifully perform his functions as a firefighter for his employer. As such, the [plaintiff's] carrying of the turnout gear at the time of his injury was for the mutual benefit of himself and his employer. Without the turnout gear, he would have been unable to perform the functions of his position as a firefighter for the assignment at the different firehouse." We are not persuaded.

First, the plaintiff's conclusion does not follow from his premise. That it is common practice for firefighters to bring their turnout gear home and that the defendant knows of that practice does not mean that the practice is for the benefit of the defendant and, therefore, compensable. "[I]f the act being performed is for the exclusive benefit of the employee so that it is a personal privilege or is one which the employer permits the employee to undertake for the benefit of some other

person or for some cause apart from his own interests, an injury arising out of it will not be compensable." *Smith* v. *Seamless Rubber Co.*, 111 Conn. 365, 369, 150 A. 110 (1930).

Second, the plaintiff's conclusion that he would be unable to perform his job as a firefighter if he did not bring his turnout gear home is belied by the factual findings of the commissioner, which the plaintiff has not challenged. In particular, the commissioner found: "[T]he primary reason the [plaintiff] brought his gear home prior to working the overtime shift on March 22, 2020, was to shorten his commute to work that night. I find that this was for the sole benefit and convenience of the [plaintiff]. There was no evidence presented indicating that the [plaintiff would] not be able to arrive for his overtime assignment on time had he driven to his normal firehouse and gathered his turnout gear before travelling to Station 5." Based on this finding, the board's conclusion that the plaintiff's fall occurred as a result of a preliminary act at his abode that was not directed or requested by the defendant is legally and logically correct. The plaintiff's injuries therefore are not compensable. See General Statutes § 31-275 (1) (E).

The decision of the Compensation Review Board is affirmed.

In this opinion the other judges concurred.

[1] We note that, in 2021, the legislature enacted Public Acts 2021, No. 21-18, § 1 (P.A. 21-18), codified at General Statutes § 31-275d, which substituted the term "administrative law judge" for "workers' compensation commissioner" and "commissioner" in several enumerated sections of the General Statutes, including sections contained in the Workers' Compensation Act, General Statutes § 31-275 et seq. Because the events at issue in this appeal occurred prior to October 1, 2021, the effective date of P.A. 21-18, § 1, in this opinion we use the terms workers' compensation commissioner and commissioner.

[2] PMA Management Corporation, the workers' compensation insurer for the Waterbury Fire Department, also was named as a defendant. For ease of reference, we refer to the fire department as the defendant in this opinion.

[3] The plaintiff testified before the commissioner that he could have declined the overtime request. Thus, there was no requirement that the plaintiff work the overtime shift.

[4] The plaintiff sought an evaluation for right knee pain on May 26, 2020. An MRI revealed a "[r]ight knee lateral collateral ligament tear grade 3, hamstring tear complete evulsion off the fibula, healing minimally displaced medial tibial plateau fracture." A follow-up examination on September 15, 2020, revealed that the ligament tear had healed and that the plaintiff's right knee was stable.

[5] The commissioner also concluded that, because the plaintiff was still on his property at the time of his fall, the portal-to-portal provision of General Statutes § 31-275 (1) (A) (i) did not provide coverage for the plaintiff's injuries. See *Perun* v. *Danbury*, 143 Conn. App. 313, 317, 67 A.3d 1018 (2013) (injuries resulting from police officer's fall on driveway not compensable because he was still on his property and his commute had not yet begun); cf. *Balloli* v. *New Haven Police Dept.*, 324 Conn. 14, 30, 151 A.3d 367 (2016) (injuries to police officer occurring beyond boundary of his property compensable under § 31-275 (1) (A) (i)). The plaintiff does not challenge this conclusion on appeal.

[6] The plaintiff's reason of appeal to the board also stated that the commissioner erred in ruling that his injury "did not occur within the portal-to-portal exception of [General Statutes] § 31-275 (1) (A) (i)." The board rejected that claim, and the plaintiff does not challenge that part of the board's decision. See footnote 5 of this opinion.

[7] General Statutes § 31-275 (1) (E) provides: "A personal injury shall not be deemed to arise out of the employment if the injury is sustained: (i) At the employee's place of abode, and (ii) while the employee is engaged in a preliminary act or acts in preparation for work unless such act or acts are undertaken at the express direction or request of the employer . . . ."

[8] General Statutes (Rev. to 2021) § 31-301 provides in relevant part: "(a) At any time within twenty days after entry of an award by the commissioner . . . either party may appeal therefrom to the [board] . . . .

"(b) . . . The [board] shall hear the appeal on the record of the hearing before the commissioner . . . .

"(c) Upon the final determination of the appeal . . . the [board] shall issue its decision, affirming, modifying or reversing the decision of the commissioner. . . ."

General Statutes § 31-301b provides in relevant part: "Any party aggrieved by the decision of the Compensation Review Board upon any question or questions of law arising in the proceedings may appeal the decision of the [board] to the Appellate Court . . . ."