SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT

STATE AUTO INSURANCE COMPANIES, **HF No. 52, 2019/20**

Insurer,

v. **DECISION**

ERIC MEYER,

Claimant.

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL § 62-7-12 and ARSD 47:03:01. The case was heard by Michelle M. Faw, Administrative Law Judge, on March 6, 2024. Claimant, Eric Meyer, was present and represented by Seamus Culhane of Turbak Law Office. The Insurer, State Auto Insurance Companies was represented by Jeff Shultz and Seth Lopour of Woods, Fuller, Shultz & Smith.

Background:

Eric Meyer (Meyer) is the owner of the Meyer & Associates, Inc. insurance agency[1] which was at all times pertinent insured for workers' compensation purposes by State Auto Insurance Companies (Insurer). On February 21, 2019, Meyer and his employee, Aaron Hansen (Hansen), traveled from their office in Watertown, South Dakota, to meet with a prospective client in Rosholt, South Dakota. The distance they traveled was approximately 77 miles via interstate 29. At around 1:30 p.m., they met

[1] Meyer & Associates regularly sold policies for State Auto Insurance Companies as agents.

with their client on his property. They viewed the location of his home and of his homestead.

After the site visit, Meyer and Hansen needed to fill their vehicle with gas. They traveled to North Dakota to get gas at the Dakota Magic Casino which was less than two miles from the customer's site. They refueled their vehicle. Then around 3:00 p.m., Meyer decided they would go into the casino because there were time sensitive things they needed to get done and their cell phone service was spotty. They also needed to deal with a sensitive personnel issue and preferred to do that in a private setting.

Inside the casino, both Meyer and Hansen had drinks and gambled. Meyer sent three work emails and received three work emails while at the casino. At around 6:05 p.m., Meyer and Hansen left the casino with Hansen driving and Meyer riding along as passenger. At around 6:36 p.m., Meyer and Hansen were rear-ended by a semi-truck and trailer. Meyer was taken by ambulance to a hospital in Sisseton, South Dakota where his blood alcohol concentration report was made at 8:46 p.m. which indicated a blood alcohol level of 0.198%. He was then airlifted to Fargo, North Dakota, where another blood draw was taken, and his blood alcohol levels were at 0.174%. The vehicle accident left Meyer permanently tetraplegic, because of damage to his spinal cord.

Issue:

The issue presented in this matter is whether Meyer was in the course of his employment at the time of his injury on February 21, 2019.

Analysis:

Insurer asserts that Meyer's claim for workers' compensation benefits is not compensable because he was not within the course of his employment when he was injured pursuant to SDCL § 62-1-1(7). As claimant, Meyer "has the burden of proving all necessary elements for qualification by a preponderance of the evidence." *Hughes v. Dakota Mill & Grain, Inc.*, 2021 S.D. 31, ¶ 13, 959 N.W.2d 903, 907. Insurer offers, *Terveen v. S. Dakota Dep't of Transp.*, 2015 S.D. 10, 861 N.W.2d 775, in support of the claim that Meyer was not acting in the course of his employment when he was injured.

In *Terveen*, Terveen was a journey transportation technician for the South Dakota Department of Transportation (DOT) who was required to travel to various locations outside of Bell Fourche, South Dakota for his work. *Id.* at ¶ 2. He was traveling from Yankton when he was injured in a one-automobile accident. *Id.* at ¶ 3. Terveen could not recall why he had turned onto the road where he had the accident. *Id.* at ¶ 3. In addition to his job with the DOT, Terveen also had a job repossessing vehicles and he had spoken to the man he worked for prior to the accident. *Id.* at ¶ 4. The South Dakota Supreme Court (Court) concluded that, at the time of the accident, Terveen "was not engaging in an activity naturally or incidentally related to his employment with DOT." *Id.* at ¶ 15. Further, Terveen did not offer any proof or explanation as to why had gone down that specific road such as needing to get gas. *Id.* at ¶ 17. Therefore, the Court concluded that Terveen did not prove that the trip "was either naturally or incidentally related to his employment or expressly or impliedly authorized by the DOT." *Id.* at ¶ 17.

Insurer argues that Meyer deviated from his employment. "Employees do not act

within the scope of their jobs when they substantially deviate from the course of employment." *S. Dakota Pub. Entity Pool for Liab. v. Winger*, 1997 S.D. 77, 10, 566 N.W.2d 125, 128 (citation omitted). "With slight deviations, coverage resumes only when employees return to the course of employment." *Id.* at 1. Insurer assert that Meyer and Hansen could have traveled directly to Watertown following the site visit and the only necessity they faced was the need to refuel their vehicle. Instead, Meyer chose to go to a casino in North Dakota for three hours during which time his calendared appointments did not take place. Meyer testified at hearing that his cell phone may have been dead. Thus, he may not have been able to do work by phone. Insurer further asserts that Meyer traveling from the casino to Watertown could not put him "back on the beam" (back on the course of his employment) due to his blood alcohol levels.

Meyer counters that he was within the course of his employment when he was injured, and he was working for the three hours while in the casino. Specifically, he mentions emails he sent and received from Insurer's employee, Brenda Christensen (Christensen), regarding the purchase of an additional physical location for his business. Hansen testified they were also addressing a personnel issue that they preferred to discuss away from the office, as well as other time sensitive issues requiring steady cell service. Records show, Hansen was communicating with an underwriter at 4:58 p.m. by phone.

Meyer does not deny that he drank while at the casino. He testified at deposition that he drank while waiting for Hansen to work, but he stated that he did not drink a lot. Additionally, Meyer testified that alcohol use in the insurance business is commonplace. Christensen testified at hearing that just because someone is drinking does not mean

they are not working. She testified that social drinking is an insurance industry-wide practice. Meyer argues that he was expressly authorized to be doing what he was doing on behalf of Meyer Insurance on February 21, 2019. “The express or implied contract of employment defines the course of the employer/employee relationship.” *Rohlck v. J & L Rainbow*, 1996 S.D. 115. Therefore, he should be considered to have been in the course of his employment.

The Department concludes that at the time of his injury Meyer was in the course of his employment. In *Terveen*, the Court stated that whether an injury occurred in the course of employment was a factor to be “construed liberally so that the application of the workers' compensation statutes is ‘not limited solely to the times when the employee is engaged in the work that he was hired to perform.’” *Terveen* ¶ 8. The evidence available in the record is not conclusive regarding whether Meyer was working for the three hours he spent at the casino. However, at the time he was injured, Meyer was in a vehicle returning from a work trip. Additionally, there is no evidence that anything Meyer did in the casino affected his injury or how it occurred.

> The term “in the course of employment” refers to the time, place, and circumstances of the injury. An employee is acting “in the course of employment” when an employee is “doing something that is either naturally or incidentally related to his employment or which he is either expressly or impliedly authorized to do by the contract or nature of the employment.”

Fair v. Nash Finch Co., 2007 S.D. 16, ¶ 11, 728 N.W.2d 623, 629. (internal quotations and citations)

Unlike the mysterious trip down a side road in *Terveen*, traveling to the customer’s property and needing to refuel a vehicle are both naturally related to Meyer’s employment. At the time of the accident, Meyer and Hansen were on the shortest, most

direct route possible between the client's property and location of their offices in Watertown. Regardless of what Meyer spent the three hours in the casino doing, his injury occurred in the vehicle returning from a trip which was naturally related to his employment.

Insurer has offered expert analysis of Meyer's blood alcohol level related to the two blood draws. Experts, Roger Mathison[2] and Dr. Douglas Martin[3], calculated that: (1) Meyer's alcohol levels peaked between 0.232% and 0.259%, and (2) Meyer had to have consumed at least 34 to 41.4 ounces of 80-proof liquor, or 334 ounces of beer over the course of the three hours in order to achieve the levels contained in the blood draws. Insurer assert that Meyer was so inebriated that he could not have been working. However, the only activity required by Meyer at the time of his injury was to sit as a passenger in a vehicle while they traveled back to the office to conclude their work trip. Even in an inebriated state, Meyer was able to do that. Meyer asserts that had he ever "left the beam," he was back on it as they traveled down I-29 for 20-30 miles before the crash occurred. The Department agrees. Once he was back in the vehicle traveling back to the office he was "back on the beam." The Department concludes that Meyer has proven by a preponderance of the evidence that he was in the course of his employment at the time of his injury on February 21, 2019.

Meyer shall submit proposed Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Insurer shall have an additional twenty (20) days from the date of receipt of Meyer's proposed Findings and Conclusions to submit objections thereto and/or to

[2] Mr. Mathison is a forensic chemist at the State Health Laboratory
[3] Dr. Martin is an occupational medicine physician and medical review officer.

submit its own proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Meyer shall submit such Stipulation along with an Order consistent with this Decision.

Dated this day 24 of October 2024.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

Michelle M. Faw
Administrative Law Judge