COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO.:** 047621-02

Sandra Perzanowski	Employee
Mental Health Associates of Greater Springfield	Employer
Liberty Mutual Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, Costigan and Horan)

APPEARANCES
Michael E. Kokonowski, Esq., for the employee
Patricia Vachereau, Esq., for the insurer

FABRICANT, J. The employee appeals from a decision denying her claim of a work-related injury sustained while travelling to her fixed place of employment, based on the "going and coming" rule that generally bars compensation under such circumstances. The employee argues that her claim falls within the "special trip" exception to that rule, most recently explored in Rouse v. Greater Lynn Mental Health, 16 Mass. Workers' Comp. Rep. 7 (2002), aff'd Mass. App. Ct., No. 02-J-48 (March 3, 2004)(single justice). The judge distinguished Rouse in his denial of benefits. Because we disagree with the basis of the judge's legal conclusion, and because the judge otherwise made insufficient subsidiary findings of fact to allow appropriate appellate review, we reverse the decision and recommit the case.

The employee worked as a residential assistant at a group home, with her usual shift being 2:00 p.m. to 10:00 p.m. On February 12, 2003, however, the employee was scheduled to go in at noon. Early that morning, a co-worker called to request that the employee come in even earlier to provide coverage for a resident who was returning from the hospital. The employee agreed to be there at 9:00 a.m. While driving her normal route to the residential home, the employee's car went out of control due to the snowy conditions, and she sustained serious injuries. (Dec. 3.)

In Rouse, supra, a certified home health aide was similarly injured while on her way to work early, due to a resident's need to have an aide with her at a time normally without

coverage. In that case, the reason for the unusual shift was a snowstorm that resulted in cancellation of the day program the resident attended. Ms. Rouse was injured on her way to the group home when she slipped and fell in the blizzard. Id. at 8.

The judge in the instant case distinguished Rouse:

> In Rouse, the snowstorm itself was the reason for both the problem in coverage and the employee's accident. In this case, coverage was needed because a client was coming back from the hospital at a time when there was usually no coverage at the residence. [The employee] agreed to come in a few hours early so that there would be coverage. While it was snowing, that was not a consideration in the lack of coverage. It could just as well have been snowing at the time she had been scheduled to come in at noon. The only difference between [the employee's] usual commute and her commute to work on that particular day was that it was at 9 a.m. rather than at 2 p.m. I do not find this a significant enough difference to warrant taking an exception to the "going and coming" rule.

(Dec. 3-4.) Accordingly, the judge denied benefits. (Dec. 4.)

We disagree with the judge's legal reasoning. The cause of the injury on the way to or from work is not the determining factor in the fact-intensive analysis necessary in "going and coming" cases. The relevant inquiry, as stated in Rouse, is whether the work impelled the employee to make a special trip, authorized by - and to the benefit of - the employer. Id. at 11-13. See Papanastassiou's Case, 362 Mass. 91, 93-94 (1972); Caron's Case, 351 Mass. 406, 409 (1966)("Although each case must be decided on its facts, where it appears that it was the employment which impelled the employee to make the trip, the risk of the trip is a hazard of the employment.") . In assessing the "going and coming" issue, the judge should look at "the nature, conditions, obligations or incidents *of the employment*," (Papanastassiou's Case, supra at 93, emphasis added), instead of what caused the employee's injury. In both Rouse and the present case, the snowy conditions of the public ways were ordinary risks of the street that would not support a compensable injury in the course of an everyday commute to and from a fixed place of employment. In this respect, the judge's reasoning is correct. However, asking what caused the injury is the wrong question. The essential question is what caused the employee to make the trip. Here, the judge's findings do not answer that question, and thus leave us without a proper foundation to fulfill our appellate function.

Accordingly, we reverse the decision and recommit the case for further findings consistent with this opinion.

So ordered.

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Bernard W. Fabricant
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

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Mark D. Horan
Administrative Law Judge

Filed: December 19, 2005