COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 044034-03**

Stephen Murphy	Employee
Micro Technology Solutions	Employer
Granite State Insurance Co.	Insurer

REVIEWING BOARD DECISION
(Judges Fabricant, McCarthy and Costigan)

APPEARANCES
Joseph M. Burke, Esq., for the employee
Thomas F. Finn, Esq., for the insurer

FABRICANT, J. Stephen Murphy appeals from a decision in which an administrative judge denied his claim for workers' compensation benefits, reasoning that the motor vehicle accident in issue was subject to the "going and coming" rule, and therefore did not arise out of or in the course of the employment. We affirm the decision.

The employee's job as a sales representative required spending substantial amounts of the workday outside of his office in Fall River. Mr. Murphy was required to report to his office at 8:30 a.m. before going out in the field for appointments with customers or potential customers. The employee could travel directly to a customer appointment prior to coming in to the office only if he obtained the express permission of his employer in advance. The employee used his own vehicle to travel to and from his appointments outside of the office, and he was not reimbursed for mileage, meals, cell phone charges or any other expenses incurred while attending these appointments. (Dec. 5.)

On December 18, 2003, the employee visited a customer in Holliston, MA. Upon leaving the customer's premises, he chose to proceed on Route 495 because Route 24, his preferred route home or to the office, was backed up with traffic. En route at 4:37 p.m., the employee called the office to see if he could proceed directly home, rather than report back to the office. The employer gave Mr. Murphy permission to go directly home. The

employee then called his wife, and talked to her about picking up their son at day care. (Dec. 6.)

At 5:17 p.m., the employer called the employee in his car to inform him that a prospective customer had returned an earlier call from him. The employee pulled over into a rest area on Route 495 to return that call at 5:21 p.m. After concluding his phone call to the customer, the employee proceeded to drive back on to Route 495 to continue on his way to pick up his son from day care. At 5:28 p.m., Mr. Murphy suffered severe injuries in a motor vehicle accident on Route 495 when a vehicle travelling in the opposite direction crossed the median and collided head on with his vehicle. (Dec. 6-7.)

The judge concluded that the employee's claim was barred by application of the going and coming rule, which disallows compensation for injuries suffered while traveling to or from one's fixed place of employment:

> [The employee] had a fixed place of employment. At the time of the motor vehicle accident, he was traveling to get his son and to go home in his own private vehicle. Clearly, the employment did not impel the employee to make the trip as he was going to get his son and then go home. At the time of the collision he was not engaged in the undertakings of the employer. The fact that the employee made a call to a customer does not convert this employee to a traveling employee of the sort for whom risks of the road are an incident of the employment. He had already made his business call at the time of the collision and was simply proceeding home at the end of the workday, like any other worker.
>
> I find nothing in the case at bar to exempt it from the ordinary bar to compensation posed by the "coming and going rule"

(Dec. 8.) The judge therefore denied and dismissed the claim. (Dec. 8-9.) The employee appeals and challenges the judge's ruling.

The employee's argument on appeal is that "[the employee] would have been safely beyond the point of this accident had he not acted to further the interests of his employer's business by stopping to make a call to his employer's customer." (Employee br., 11.) There is no dispute that the telephone calls the employee made just prior to the motor vehicle accident were work-related. Had the employee been injured while stopped and involved in making or receiving these calls, he would have an argument as to his

entitlement to compensation for that injury. However, it is not tenable to assert compensability solely because the employee's work-related stop was a "but for" cause of his presence at the exact point of impact at that exact time. Following this logic, any job duty that keeps an employee at the office longer than the designated workday might thereby imbue liability on an employer with any number of aspects of the commute home.[1]

Instead, this case is simply governed by the well-established principles articulated in Gwaltney's Case, 355 Mass. 333, 334-335 (1969), where the employee, travelling with his own car to various appointments on company business, had to report to his fixed place of employment prior to going out on his rounds. His injury, sustained while going to that fixed place of employment, was held to be just a normal commute, to which the act did not extend, even though the employee was going to be traveling elsewhere on company business later in the day. That fact did "not alter the factual situation that actually existed at the time of the accident," namely that he was simply on his way to work. Id. at 335. Mr. Murphy's accident is indistinguishable, as he was also simply on his way home at the time.[2] See also Langadinos v. One Stop Business Centers, Inc., 14 Mass. Workers' Comp. Rep. 268 (2000)(employee who took work home with him from fixed place of employment not covered by act when in motor vehicle accident on way home).

We affirm the decision.

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[1] If, for example, an employee is run over by a motorist in a crosswalk after leaving his office late, the argument in the instant case would allow him to claim that if he had left work at the usual time, he would not have been in the crosswalk with the negligent motorist, and would instead have "…been safely past the point of collision." (Employee br., 11.) The employee's argument does not pass muster. Contrast Haslam v. Modern Continental Constr. Co., 20 Mass. Workers' Comp. Rep. 41 (2006)(severe fatigue from 27 consecutive hours working caused motor vehicle accident on way home; injury compensable).

[2] We make no distinction between the employee travelling directly to his home or to another non-work related destination such as his son's day care center, once he concluded his work related activity.

So ordered.

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Bernard W. Fabricant
Administrative Law Judge

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William A. McCarthy
Administrative Law Judge

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Patricia A. Costigan
Administrative Law Judge

Filed: **June 5, 2007**