University of Baltimore Law Forum

Volume 31
Number 1 *Summer/Fall 2000*

Article 14

2000

Recent Developments: Mulready v. University Research Corporation: An Injury to a Traveling Employee "Arises out of" Employment if It Occurs as a Result of an Activity Reasonably Incidental to Travel Required by the Employer

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Mulready v. University Research Corporation:

An Injury to a Traveling Employee "Arises Out Of" Employment If It Occurs as a Result of an Activity Reasonably Incidental to Travel Required by the Employer

By Ingrid Abbot

Substantially adopting the "positional-risk" test, the Court of Appeals of Maryland held that an injury occurring as a result of an activity reasonably incidental to travel required by the employer, is one "arising out of employment" and is therefore compensable under the Maryland worker's compensation law. *Mulready v. University Research* Corp., 360 Md. 51, 756 A.2d 575 (2000). In so holding, the court ruled that unless an employee is on a personal errand distinctly not related to employment, injuries resulting from everyday activities such as eating and bathing are generally compensable.

On May 31, 1995, Patricia Mulready ("Mulready"), was attending a seminar in Canada on behalf of her employer, University Research Corporation ("University"). University selected and paid for the hotel, and directed Mulready to stay there. In her capacity as a dissemination coordinator, Mulready was to take an active part in a meeting later that day. As she prepared for the meeting, Mulready was injured when she slipped in her hotel bathtub.

The Worker's Compensation Commission ruled the injury was compensable. University agreed that Mulready was acting in the course of her employment when she was injured, but sought review in the Circuit Court for Montgomery County where both sides moved for summary judgment. The circuit court granted the employer's motion and denied Mulready's claim. Mulready appealed to the court of special appeals which affirmed the circuit court's ruling. The Court of Appeals of Maryland granted certiorari to determine whether Mulready's injury was one "arising out of" her employment.

In the first part of its analysis, the court of appeals surveyed earlier Maryland cases that examined the "arising out of employment" concept. *Id.* at 55, A.2d at 577. The court began by reviewing a 1929 decision, *Weston-Dodson Co. v. Carl,* 156 Md. 535, 144 A. 708 (1929). The *Weston-Dodson* court ruled that there first must be a causal connection between the conditions of the employment and the resulting injury before the "arising out of" standard could apply. *Id.* (citing *Weston-Dodson, 156* Md. at 538, 144 A. at 709). However, injuries that could not be traced to the employment as a contributing proximate cause, or injuries that came from a hazard to which the employees would have been equally exposed away from employment, were excluded. *Id.*

The court next examined *Knoche v. Cox*, 282 Md. 447, 385 A.2d 1179 (1978), where a dental hygienist was killed at work after her employer accidentally fired a gun. *Id.* at 52, 756 A.2d at 577. The *Knoche* court reasoned that the fatal injury arose out of employment because a job-related task need not be the direct or physical cause of the injury. Rather, the injury must be one suffered as result of employment. *Id.* at 57, 756 A.2d at 578.

The court then focused on cases involving traveling employees and "arising out of employment" issues. *Id.* The court observed that current Maryland law follows *Klein v. Terra Chemicals International,Inc.*, 14 Md. App. 172, 286 A.2d 568 (1972). In *Klein*, the employee was attending a conference, and died after choking on his food while having dinner with two potential customers. *Id.* The *Klein* court ruled that the injury was not compensable under Maryland law because it lacked the requisite causal connection to Klein's employment needed to satisfy Maryland's "arising out of" employment standard. *Id. Klein* does not equate "arising out of" with "in the course of" employment, but requires that the employee be exposed to some risk that is not "common to the public" to satisfy the "arising out of" employment standard. *Id.* at 58, 756 A.2d at 578-79.

The court first observed that *Klein* was contrary to the majority "traveling employee" rule, which states that traveling employees on a business trip are continuously within the scope of employment during the trip, except when a distinct departure on a personal errand is shown. *Id.* at 55, 59 756 A.2d at 577, 579 (quoting 2 A. Larson & L. K. Larson, Larson's Worker's Compensation Law, §25.01 at 1-2 (2000)).

Comparing the factors used by other states to decide when a traveling employee's injury arises out of employment, the court found that some jurisdictions base their decision on the "increased risk" test, while others use the "positional-risk" test. *Id.* at 59, 756 A.2d at 579. Under the increased-risk test used by Maryland in *Klein*, an employee must be exposed to a qualitatively greater degree of risk than the general public. *Id.* Under the positional-risk test, however, the injury would not have occurred if the employee's job had not required him to be in the place where he was injured. *Id.* (citing *Olinger Construction Co. v. Mosbey,* 427 N.E.2d 910 (Ind. Ct. App. 1981)).

The court's review revealed that where courts applied the positional-risk test, they ruled that the work-employment connection need not be the sole cause of the injury as long as it contributed to the injury. *Id.* at 61, 756 A.2d at 580. The positional-risk test was satisfied if the injury was incidental to employment, and the employment was a contributing cause of the injury. *Id.* Similarly, other cases held injuries compensable even though the employee was not actively engaged in performing his job at the time of the injury, but was away from home in furtherance of the employer's business. *Id.*

The court further noted that when other jurisdictions considered bathtub injuries, as in the case at bar, the injuries were held compensable under the general rule that an employee is acting in furtherance of his employer's business, and is therefore covered by worker's compensation while traveling. *Id.* at 62-63, 756 A.2d at 581. Moreover, when courts considered the employee's unfamiliar surroundings as an increased risk of work-related travel, the resulting decision to award compensation was based on the positional-risk test. *Id.* at 64, 756 A.2d at 582.

Based on its review, the court of appeals concluded that it did not matter whether Mulready's injury occurred during a bathroom fall, while eating, or during any other normal activity. *Id.* at 66, 756 A.2d at 583. Adopting what is substantially the "positional-risk" test, the court held that unless the injury was sustained during a personal errand distinctly outside the scope of the employee's duties, an injury to a traveling employee is compensable if it results from an ordinary activity, such as bathing, that is reasonably incidental to the travel required by the employer. *Id.*

In *Mulready v. University Research Corp.*, the Court of Appeals of Maryland "substantially" adopted the "positional- risk" test, disapproving rather than rejecting Maryland's previous "increased risk" test. Interestingly, since it failed to establish the "positional-risk" rule as a bright-line test in Maryland, it appears that the court did not foreclose the possibility that future traveling employee cases will be decided on the facts of each individual case.

With this decision, the court continues to follow the legislative mandate of liberally construing worker's compensation law in favor of the claimant. Although the statute does not hold employers responsible for every hazard to which an employee is exposed, traveling employees will be protected for injuries sustained during normal activities which are reasonably incidental to the travel. Hopefully, the court will revisit this issue and address employers' concerns of unchecked liability for traveling employees by defining the scope of activities that can be deemed reasonably incidental to travel, and by fashioning a more clear-cut standard for such activities.