STATE OF MICHIGAN

COURT OF APPEALS

RANDY BEUS, Deceased, by MONICA BEUS, Surviving Spouse, Plaintiff-Appellee, v BROAD, VOGT & CONANT INC., STAR INSURANCE COMPANY, and MEADOWBROOK CLAIMS SERVICE, Defendants-Appellants.	UNPUBLISHED August 3, 2006 No. 258995 WCAC LC No. 03-000316

Before: Neff, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

Defendants Broad, Vogt & Conant Inc., Star Insurance Company, and Meadowbrook Claims Service, appeal by leave granted an order of the Worker's Compensation Appellate Commission ("WCAC") which reversed a magistrate's denial of benefits. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises out of the July 26, 1998, death of Randy Beus[1] from injuries sustained in a motor vehicle accident in Mexico. Plaintiff was hired by The Broad Group in 1997 to fill a position in Mexico. The Broad Group agreed to pay for certain relocation expenses incurred by plaintiff and his family. After accepting the job offer, plaintiff left his family in Ada, Michigan, and moved to Mexico. Once plaintiff's children finished the school year, the family's home in Ada was sold, and Mrs. Beus and the four children temporarily relocated to plaintiff's parents' home in Phoenix, Arizona. On July 23, 1998, plaintiff flew from Mexico to Phoenix. The following morning, plaintiff met with a potential client in Arizona, and performed other business related activities. That same day, after plaintiff's business activities were completed, the family drove a van from Phoenix to Tucson, Arizona, for an overnight stay with Mrs. Beus's sister. The following morning, plaintiff and his family drove from Arizona to Mexico. The family stayed

[1] Although this case was brought by Monica Beus, her claim is derivative of that of her husband Randy. In its analysis, the WCAC referred to Randy as "plaintiff." For the sake of consistency, this opinion will also refer to Randy as "plaintiff."

overnight at a motel in Hermosillo, Mexico, on the way to their home in Irapuato, Mexico. The next morning, July 26, 1998, after approximately one hour of driving, the Beus's van began to swerve, and then rolled over. The family was taken to a hospital, where plaintiff died.

A worker's compensation magistrate denied plaintiff's claim for benefits. The magistrate cited MCL 418.301(3), which states in part that, "an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under the act." According to the magistrate, the "major purpose" of relocating plaintiff's family to Mexico was social or recreational.

On appeal, the WCAC reversed, finding that plaintiff was on a "business trip." The WCAC noted that plaintiff had returned to Arizona for two business related purposes: (1) making a sales call on a potential client, and (2) traveling, at his employer's expense, to his Mexico residence with his family. In light of these purposes for the trip, the WCAC concluded that plaintiff's death arose out of and in the course of his employment, and that benefits were proper.

The WCAC must review the magistrate's decision under the "substantial evidence" standard, while we review the WCAC's decision under the "any evidence" standard. *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 709; 614 NW2d 607 (2000). Our review begins with the WCAC's decision, not the decision issued by the magistrate. *Id*. If there is any evidence supporting the WCAC's factual findings, and if the WCAC did not misapprehend its administrative appellate role in reviewing the magistrate's decision, then we must treat the WCAC's factual findings as conclusive. *Id*. at 709-710. We review de novo questions of law in any WCAC order. *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000). A decision of the WCAC is subject to reversal if it is based on erroneous legal reasoning or the wrong legal framework. *Id*. at 401-402.

Generally speaking, an employee who suffers a "personal injury arising out of and in the course of employment" is entitled to worker's compensation benefits. MCL 418.301(1). The employee bears the burden of proving both a personal injury and a relationship between the injury and the workplace. *Eversman v Concrete Cutting & Breaking*, 463 Mich 86, 92; 614 NW2d 862 (2000).

At issue in this case is the application of MCL 418.301(3), which provides:

> An employee going to or from his or her work, while on the premises where the employee's work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, **an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act**. Any cause of action brought for such an injury is not subject to section 131. [Emphasis added.]

Although the presumption created in the first sentence of MCL 418.301(3) pertains only to injuries occurring on the way to work, at work, or during a reasonable time before or after work, application of the "social or recreational" exception in the second sentence of MCL 418.301(3) is not limited to situations covered by the presumption in MCL 418.301(3). *Nock v M & G Convoy (On Remand)*, 204 Mich App 116, 120-121; 514 NW2d 200 (1994). Instead, no injuries are

compensable "if the 'major purpose' of the event during which they are incurred is social or recreational." *Id*. at 121.

In *Eversman*, *supra* at 90, the plaintiff's work required him to travel out of state to various work sites for multi-day assignments. He was injured while on an assignment in Pennsylvania. *Id*. He was struck by a car as he walked across a divided highway that separated the motel in which he was staying from a bar. *Id*. at 90-91. This Court concluded that the plaintiff was entitled to benefits under the "traveling employee doctrine," which provides that "[t]raveling employees on a business trip are considered to be continuously within the scope of their employment during their trip, except when a distinct departure for a personal errand can be shown." *Eversman v Concrete Cutting & Breaking*, 224 Mich App 221, 225, 227-228; 568 NW2d 387 (1997).

Our Supreme Court reversed, holding that, "[r]egardless of whether Eversman was on a special mission or working as a traveling employee, his recovery is precluded under the plain language of MCL 418.301(3)." *Eversman*, *supra* at 93. The *Eversman* Court stated that, "[i]n applying the social or recreational test of subsection 301(3), the Court does not need to examine the purpose of the special mission, the work-day's activities, or the out-of-town trip, but rather must consider the major purpose of the activity in which the plaintiff was engaged at the time of the injury." *Id*. at 95. The *Eversman* Court went on:

> Determining the "major purpose" of an activity can often be a difficult exercise. Here, however, there can be no question that the major purpose of Eversman's activities was social or recreational. At the time of the accident Eversman was ending a six-hour span of visiting bars, drinking beer, and playing pool. There is some dispute over whether Eversman's intoxication contributed to his injuries. However, intoxicated or not, the major purpose of Eversman's activities was social or recreational. Eversman was given the day off. No work-related activities were expected of him; his time was his own. He played pool and drank beer, visiting several bars in the process. Eversman argues that because it was necessary for him to eat dinner, the visit to the bar for chicken wings and beer was not a social or recreational activity. We disagree. Examining the totality of the circumstances surrounding Eversman's activities during the six-hour episode, we conclude that his conduct fell within the exception set forth in subsection 301(3). [*Id*. at 96.]

Here, the WCAC's conclusion that plaintiff's death arose out of and in the course of his employment was based on the fact that plaintiff was on a "special mission" for the benefit of his employer, i.e., a business trip to a potential client in Arizona, and the fact that the relocation of plaintiff's family to their new home in Mexico was at his employer's expense. However, even accepting these facts, we disagree with the WCAC's ultimate conclusion.

Regardless of the fact that plaintiff met with a potential business client in Arizona, according to *Eversman*, *supra*, the focus is not on the purpose behind the trip in general, but on the "major purpose" of the activity in which the plaintiff was engaged at the time of the injury. *Id*. at 95. In this case, at the time of plaintiff's injury, his activity had shifted from any business meeting in Arizona to the relocation of his family to Mexico. While there was evidence that, for several hours before leaving Arizona, plaintiff may have conducted business on defendant's

behalf, it is difficult to conclude that picking up plaintiff's family in Arizona, and driving them, for three days, to Mexico, was merely a "minor" aspect of plaintiff's trip to Arizona; particularly when weighed against the gravity of the business meeting, which, based on the evidence, did not appear to be of much substance. In terms of relative import, the business meeting aspect of the trip was dwarfed in comparison to the relocation aspect of the trip. Accordingly, the "major purpose" of the trip to Arizona was to complete the relocation of plaintiff's family to Mexico.

The question then becomes whether the "major purpose" of this activity, i.e., relocating plaintiff's family, was "social or recreational" in nature. Arguably, as the WCAC found, the relocation was a "business related activity" in the sense that it was plaintiff's employment in Mexico which necessitated the move. However, such a "but for" causal relationship is not the proper test.[2] The relevant consideration is whether the "major purpose" behind the activity is "social or recreational" in nature. In this case, plaintiff had worked for months in Mexico while his family remained in this country. Therefore, relocating his family was not necessary for plaintiff to perform his job. Instead, the relocation enhanced plaintiff's life outside of work, i.e., his "social" life. While the relocation of plaintiff's family to Mexico may have indirectly affected plaintiff's satisfaction and performance in the workplace, the "major purpose" of the relocation was "social," and any benefit which inured to defendant, or plaintiff's work, was the product of a change in plaintiff's "social" life outside of work. Thus, the "major purpose" of relocating plaintiff's family was "social" in nature.[3]

At the time of the accident, plaintiff was in the process of relocating his family to a home near his workplace in Mexico. The "major purpose" of such an activity was "social" in nature. Therefore, MCL 418.301(3) bars compensation. Consequently, the WCAC erred in concluding that compensation was proper under the facts of this case.

We reverse.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra

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[2] For example, in *Eversman*, *supra*, it could similarly be argued that, "but for" the business trip, the plaintiff would not have been struck by the vehicle.

[3] Contrary to the WCAC, we find the fact that plaintiff's employer may have paid relocation expenses to be of little significance. As mentioned, the relevant consideration is the "major purpose" behind the activity in which plaintiff was engaged at the time of his death. While the payment of relocation expenses is arguably evidence of a work related purpose, for the reasons previously discussed, in this case, the "major purpose" of the relocation was social in nature, and that social aspect of the activity overrode any work related purpose.