Circuit Court for Montgomery County
Case No. 485586V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 2048

September Term, 2021

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IN THE MATTER OF HAYFORD AMEY

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Graeff,
Reed,
Friedman,

JJ.

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Opinion by Friedman, J.

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Filed: March 20, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. R. 1-104.

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is a workers' compensation case about a bus driver who was hit by a car while crossing the street on the way back to work after eating lunch. We hold that, under the circumstances, his injury arose out of and in the course of employment and is, therefore, compensable in the Workers' Compensation system.

## BACKGROUND

Hayford Amey is a bus driver employed by Montgomery County Transit. On a fall day in 2020, Amey and other bus drivers were being trained to drive a new bus on a new route. After completing the new route once, the trainer asked Amey to stop for lunch. Amey drove to an old shopping center and parked. The trainer suggested that all of the drivers "go find some food, eat and then come back." Because there were no food options at the shopping center where he had parked, Amey walked across the street to find a place to eat. After lunch, Amey was walking back across the street when he was struck by a hit-and-run driver.

Amey filed a claim for compensation in the Workers' Compensation Commission. After a hearing, the Commission denied Amey's claim, finding that his injuries were not sustained in the course of his employment. Amey sought judicial review in the Circuit Court for Montgomery County, which affirmed. This timely appeal followed.

## ANALYSIS

A compensable "accidental personal injury" is one that "arises out of and in the course of employment." MD. CODE, LABOR & EMPLOYMENT ("LE") § 9-101(b)(1). "Whether an injury arises out of and in the course of employment is determined by the

facts and circumstances of each individual case." *Livering v. Richardson's Rest.*, 374 Md. 566, 574 (2003).

## I. IN THE COURSE OF EMPLOYMENT

The first issue is whether Amey was injured in the course of employment. The phrase "in the course of employment," refers to the time, place, and circumstances of employment. *Knoche v. Cox*, 282 Md. 447, 454 (1978). "An injury arises 'in the course of employment' when it occurs: (1) within the period of employment, (2) at a place where the employee reasonably may be in the performance of [their] duties, and (3) while [they are] fulfilling those duties or engaged in doing something incident thereto." *Montgomery Cnty. v. Smith*, 144 Md. App. 548, 558 (2002) (citing *Knoche*, 282 Md. at 454).

We think this case is very much like the circumstances presented to this Court in *King Waterproofing Co. v. Slovsky*, 71 Md. App. 247 (1987). In that case, Slovsky was injured while crossing the street on a paid coffee break in the middle of his shift. *Id*. at 249. This Court (Karwacki, J.) held that Slovsky's injury was compensable because traveling to and from his off-premises break fit within the "personal comfort doctrine," which holds that breaks are work-related because they benefit both employer and employee. *Id*. at 253; 2 ARTHUR LARSON ET AL., LARSON'S WORKERS' COMPENSATION LAW 20-2 (2022) (explaining the "personal comfort doctrine"). Although we held for Slovsky, we noted that there can be factual situations in which an employee's lunch break is so long, and the employee's freedom of movement so complete, and the relation of their activity to their employment so tenuous, that the Commission or a reviewing court would not err in concluding that injuries sustained during such a break are not work-related. *Slovsky*, 71

Md. App. at 253-54; *see also Coates v. J.M. Bucheimer Co.*, 242 Md. 198, 200-01 (1966) (holding that employee's exploration of premises under construction was too attenuated from employment to be an incident of employment).[1] The County, aiming to preserve its victories below, points to two distinctions between Amey's case and that of Slovsky. For the reasons that follow, however, we think that a third distinction—one that points in the opposite direction—is more critical.

First, the County suggests that the duration of the break is critical. Amey's was a thirty-minute lunch break, not like Slovsky's, a twenty-minute coffee break. While that factor surely counts, it is not dispositive. *Slovsky*, 71 Md. App. at 254 (quoting 1 A. LARSON, WORKMEN'S COMPENSATION LAW § 15.54 at 4-116.38 to .40 (1985)). Second, the County attempts to distinguish Amey's case from Slovsky's because Amey's lunch break, unlike Slovsky's coffee break, was unpaid. Here, we think the County reads too much into the language in *Slovsky*, 71 Md. App. at 254, and *Garrity v. Injured Workers' Ins. Fund*, 203 Md. App. 285, 303 (2012). While those cases correctly suggest that whether

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[1] The County assumes that because Amey's lunch break was off premises, his activity was sufficiently attenuated from his employment to apply the "going and coming" rule. *See Slovsky*, 71 Md. App. at 254 ("There would appear to be a greater likelihood, however, that an employee who leaves his employer's premises during a coffee break or rest break may depart from the course of his employment."). There are two important reasons why the "going and coming" rule is inappropriate here. First, the "going and coming" rule primarily applies to the commute at the beginning and end of the day, and applying it to off-premises lunch breaks is only justified when the duration of the lunch period and the employee's freedom of movement are so substantial that the course of employment is effectively suspended. *Id*. at 253; 2 LARSON ET AL. at 13-56. Second, the "going and coming" rule presumes the employee has a fixed place of work from which to commute, 2 LARSON ET AL. at 13-1, a precondition that is not present here.

it is paid or unpaid can be factor in determining whether the personal comfort doctrine applies, neither of those cases make that factor dispositive. *Slovsky*, 71 Md. App. at 254; *Garrity*, 203 Md. App at 303.

Rather than those distinctions of duration and pay status, we think that the dispositive distinction between Amey and *Slovsky* is that Amey had even less control of his break than Slovsky. Amey drove his bus as the County directed. Amey parked the bus at the old shopping center because the County told him to. Amey parked when the County told him to take his lunch break. Amey did not decide how long of a lunch break to take. Amey crossed the road, not as an expression of his free choice, but because that was how to get to the lunch break permitted him. And Amey didn't choose his lunch spot freely (nor did he leave from a fixed place of employment) but based on what was near the parking lot determined exclusively by the County. Amey's case is different from *Slovsky* but in a way that makes it more, rather than less, work-related. We hold, therefore, that Amey did not leave the course of employment when he took his lunch break.

## II. ARISES OUT OF EMPLOYMENT

The County also argues that Amey's injury did not arise out of his employment. The phrase "arises out of" refers to the causal relationship between the employment and the injury. *Knoche*, 282 Md. at 455. "The injury arises out of employment when it results from some obligation, condition or incident of the employment, under the circumstances of the particular case." *Id.* (cleaned up). In essence, the County is arguing that Amey failed to demonstrate that his injury would not have occurred "but for" the fact that his employment placed him where he was when the injury occurred. According to the County, his

employment did not require him to be in the crosswalk where he was hit and therefore his injury should not be compensable. The County reads the governing cases too narrowly. A direct connection between the act causing injury and the employment is not necessary. *Id.* at 456. Rather, it is sufficient that the employee's accident arises directly out of circumstances that the employee had to encounter because of the employment. *Id.* Here, we hold that Amey would not have sustained his injury but for his employment because he took his break when and where he did at the direction of his employer.

## CONCLUSION

We, therefore, reverse the decision of the circuit court and remand it to that court with instructions to enter a judgment reversing the decision of the Commission and remanding it to the Commission for further proceedings not inconsistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS REVERSED. COSTS TO BE PAID BY APPELLEE.**