

Case Law Update

CDL and GALLAGHER BASSETT SERVICES, INC v OSCAR COREA,

29 Fla. Law Weekly D664 (Fla. 1st DCA March 16, 2004)

Workers' compensation – Fraud – Forfeiture of benefits – Where judge of compensation claims found that claimant made false statements regarding his post-accident employment, exaggerated his injuries, and was physically capable of engaging in full-time employment, JCC erroneously concluded that claimant's false statements did not preclude payment of benefits – If JCC finds that claimant had reason to know that his statements regarding his current injuries and post-accident employment were false or misleading at the time the statements were made, or that he intended to make such statements in support of his claim for benefits, then JCC should rule that benefits are precluded.

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Helen Neubauer 1941 - 2004



Helen Neubauer

Risk Management is fortunate that Helen Neubauer was a part of our Division for nearly 30 years.

Helen was born in North Carolina and graduated from Stedman High School in 1960. She was married to Gerry and they had two children, Alan and Angie. The family moved to Tallahassee from Fort Lauderdale in 1974, and Helen began work with the Department of Insurance on September 16, 1974 as a Workers' Compensation Examiner II.

Helen was promoted to Risk Management Claims Examiner in December 1977, in which her duties included supervising Workers' Compensation Claims Examiners and contracted service companies. Several promotions followed – to Insurance Administrator B in April 1985; to Insurance Administrator C in June 1988; and finally to Workers' Compensation Administrator in October 1991. Helen remained in this position with Risk Management until her death in January 2004.

Risk Management staff knew Helen Neubauer as not only the Workers' Compensation Administrator, but also as a mentor and friend. She interviewed and hired the majority of current employees in the Bureau of State Employees' Workers' Compensation Claims. Helen's other major responsibilities included managing the day-to-day claims handling operation, supervising contracted service companies and monitoring recoveries from the Special Disability Trust Fund. Primarily due to her efforts, Risk Management has recovered more than \$40 million from the Fund since 1988.

Perhaps one of Helen's most important contributions to the success of Risk Management, and one of her favorite hats to wear, was as ambassador and trainer to state agencies. She spent countless hours training workers' compensation coordinators and establishing innovative cost-effective ideas, such as modified duty and return-to-work programs.

Helen received numerous awards, and her personnel file is full of letters of appreciation from people she became acquainted with and helped over the years. The Florida Workers' Compensation Institute Inc. will name a scholarship in Helen's honor at the 2004 Conference in Orlando in August.

Helen was an outstanding employee for Risk Management, and will certainly be missed, not only by Risk Management, but also by all who had the privilege to know her.

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State Employees' Workers' Compensation Claims Bureau
Larry Sharp, Chief

Property Financial & Risk Services Bureau
Shannon Segers, Chief

Managing Editor
Wanda Brazell

Layout and Design
DFS Graphics



Important Information About Use of State Vehicles and Risk Management Coverage

State agency personnel who issue state vehicles to employees and write agency policies regarding the use of state vehicles, and employees who drive state vehicles, should be aware that there are situations in which the employee might not have auto liability and/or property damage coverage on the state vehicle. This could result in the employee having personal exposure for liability claims from third party claimants or being responsible for repairing the state vehicle. Employees should never be told or led to believe that just because they are issued a state vehicle, they are covered “24/7” for accidents and damage to the state vehicle.

The Division of Risk Management provides auto liability coverage to all state agencies. Our coverage pays on behalf of state agencies (our insureds) all sums that agencies become legally obligated to pay as a result of an automobile accident involving a state-owned vehicle; a vehicle owned by the employee; and a leased vehicle or a rental vehicle being operated by an employee, agent or volunteer of the agency while in the course and scope of employment or duties and responsibilities. Our coverage is liability coverage only, and only pays the claims submitted by the “other party” or “third party” when the state driver is at fault (negligent) in causing the accident. Our coverage does not pay for damage to the vehicle operated by the state driver (no comprehensive, collision or uninsured motorist coverage). This expense or cost in a state vehicle is normally paid or absorbed by the state agency. The state agency or the owner of the vehicle must collect for damages to their vehicle when the other party is at fault.

Liability coverage is provided by Risk Management only when the operator of a state vehicle is acting “in the course and scope



of employment.” Otherwise, the state has no liability for the actions of the operator, and Risk Management has no authority to provide coverage. State courts in Florida have issued several rulings on this issue. Use of state equipment or vehicles does not necessarily vest an employee’s activity as being in the course and scope of employment. The focus is on the primary purpose of the employee’s activity, and whether it was intended to carry out the employer’s business or the personal interests of the employee. A court ruling stated:

“An employee’s conduct is within the scope of his employment only if it is the kind he is employed to perform, it occurs substantially within the time and space limits of the employment, and it was activated at least in part by a purpose to serve the master.”

An employer is not generally liable for negligence its employees committed while either going to work or returning home, since this activity is generally not within the scope of employment. This holds true even if the car driven by the employee in going to and coming home from work is used in his/her work and partly or wholly maintained by the employer. An employee who deviates or departs from his work on a mission of his own is not within the course and scope of employment. Florida court decisions provide that an employee whose work entails travel away from the employer’s offices is within the scope of employment at all times during the trip unless when there is a “distinct departure for a non-essential personal errand.” Trips to a shopping mall, movie theatre, to visit a friend, etc., are not considered in course and scope of employment. Trips for food and other necessities would be covered. Florida courts have also ruled that the state is not vicariously liable for injuries and damages caused by a state employee operating a state vehicle outside the course and scope of his/her employment under the dangerous instrumentality doctrine.

There are several situations that have generated questions about coverage. These situations include: (a) commuting to and from work (b) using the state vehicle to go to lunch, for a doctor’s appointment, etc. (c) using the vehicle to stop en route to and from home at stores or other places for personal convenience and (d) use in approved off-duty work. Florida Statute s. 287.17, “Limitation on Use of Motor Vehicles and Aircraft,” and F.A.C. Chapter 60B-1, “Motor Vehicles and Watercraft Acquisition, Assignment and Use,” provide the criteria for the use of state vehicles for official state business and guidance for determining whether or not an employee is in the “course and scope” while using a state vehicle.

Section 287.17 (3), F.S., states:

“The term ‘official state business’ may not be construed to permit the use of a motor vehicle or aircraft for commuting purposes, unless special assignment of a motor vehicle is authorized as a perquisite by the Department of Management Services, required by an employee after normal duty hours to perform duties of the position to which assigned, or authorized for an employee whose home is the official base of operation.”

Chapter 60B-1.008, F.A.C., “Special Assignment Vehicles,” states: “Vehicles in this classification assignment may be driven to and from an employee’s home when used for the purpose or under the conditions stated below:

Use Code C-1: Perquisite – Employee is entitled to use of vehicle by virtue of his position and is so approved and authorized as a perquisite by the Department of Management Services.

Use Code C-2: Law Enforcement –Employee is subject to special emergency calls from his residence for law enforcement.

Use Code C-3: Emergency service – Employee is subject to emergency calls from his residence for the protection of life or property.

Use Code C-4: Employee’s home is office – Employee’s home is his official base of operation and vehicle is parked at home when not in use.

Unless a state employee qualifies for Use Codes 1-4, they are not covered by Risk Management while commuting to and from work *under any circumstance*. Employees who qualify for these use codes are covered while commuting, but are not covered if they deviate from their route for personal convenience until they are back on their normal route to and from work. Risk Management does not provide coverage to any state employee who is using a state car (in their home base town) to drive to lunch or for personal errands because they are not in the course and scope of employment. Also, there is no coverage for driving to and from off-duty work or while using the state vehicle for off-duty work unless the vehicle is being used in the course and scope of employment (used in making an arrest, for example).

State employees should also ask their agency who will be responsible for unattended damage (such as vandalism, tree limb falling on vehicle, etc.). Risk Management would not be involved in these situations.

State employees may be able to purchase a “non-owned automobile” rider from their personal automobile insurance carrier to cover liability and property damage when they are using the vehicle outside the course and scope of employment. The cost of this rider is usually very inexpensive, but not all insurance companies offer this option on government vehicles, and some companies only cover liability claims under this rider.

State employees can avoid using the state vehicle in situations where they are outside the course and scope of employment by leaving the state vehicle at the office except when on official state business. If you have questions about this article, please call the Bureau of State Liability Claims at (850) 413-3122 (Suncom 293-3122).



Comments, Questions...

Claims Communicator
Florida Department of
Financial Services
Division of Risk Management
200 E. Gaines Street
Tallahassee, FL 32399-0336

Phone: (850) 413-4700
Suncom: 293-4700
Fax: (850) 921-9097

