IN THE SUPREME COURT OF OHIO

CRAIG D. GRIFFITH	:	Case No. 09-0203
Plaintiff-Appellee,	:	
vs.	:	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
CITY OF MIAMISBURG, *et al.*	:	Court of Appeals Case No. 08AP-557
Defendant-Appellant.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT CITY OF MIAMISBURG

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A. FIRST PROPOSITION OF LAW 5

Under the traveling employee doctrine, a claimant's participation in a pick-up basketball game after the conclusion of a day's scheduled activites is a purely personal errand, outside the course of his employment.

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I. EXPLANATION OF WHY THIS IS A CASE OF GREAT PUBLIC AND GENERAL INTEREST

In the instant case, the Court of Appeals' decision vacating the Trial Court's dismissal of the underlying action is based upon mistaken and erroneous application of fundamental Ohio Workers' Compensation principles. If left to stand, the Tenth District Court of Appeals' decision will confuse the state of previously settled law. As the issues raised here are germane to almost every Ohio workers' compensation case, this Court should take jurisdiction of this appeal for the interest of the public in general.

It is well-settled that an employee must prove that his injury was received both in the course of and arising out of his employment. Ohio Rev. Code §4123.01(C); *Fisher v. Mayfield* (1990) 49 Ohio St. 3d 274, 277-278, 551 N.E. 2d 1271. In analyzing the "in the course of" prong, if an employee's work involves travel away from the employer's premises, he is in the course of his employment continuously during his travel except when a distinct departure on a personal errand is shown. *Cline v. Yellow Transportation, Inc. et al.*, Franklin App. No. 07AP-498, 2007 Ohio 6782; *Pascarella v. ABX Air, Inc*, Clinton App. No. CA98-01-002, 1998 WL 468810, citing Larsons, *Workers' Compensation Law* (1997) 5-286, Section 25.00. Even though the parties here and the Court of Appeals agree that Appellee Griffith was a traveling employee when he was injured, the Court of Appeals inexplicably fails to apply any traveling employee cases in its analysis of Griffith's case. The Court even declined to follow its own case, *Cline v. Yellow Transp., supra.* which, when applied, undoubtedly demonstrates Griffith's injury did not occurr in the course of his employment.

In an analysis of the "arising out of" prong, it is also well-settled that the "totality of the circumstances" must be considered. *Ruckman v. Cubby Drilling, Inc.* (1988) 81 Ohio St. 3d 117,

at 122, *citing Fischer v. Mayfield* 49 Ohio St. 3d at 278. For some reason in its review of this prong, the Court of Appeals again fails to apply a case-in-point, *Young v. State Highway Patrol Department of Admistrative Services, et al.* (9th Dist. 2007) 2007 WL 4554194. Although this case is out of a different court of appeals, the Tenth District should have applied *Young* as it is the most relevant case that applies the "totality of the circumstances" test set forth by the Ohio Supreme Court in *Ruckman*.

Ohio appellate courts are required to follow the precedent established by the Ohio Supreme Court. *State v. Daniels* (3rd Dist. No. 12-06-15), 2007-Ohio-2281, at ¶ 17. This tenet is paramount to our judicial system and required for the orderly rule of law. Further, appellate courts are bound to follow their own established precedents to provide uniformity in the law, as well as to guide litigants as to their legal rights. *State v. George* (10th Dist. 1975), 50 Ohio App. 3d 297, 309. The Tenth District itself has recognized the importance of following precedent:

> It seems to be a well established general rule that what a given court has stated in the past on a subject is important to the litigants, as well as to the court. In this regard, legal precedents provide a guiding principle in the arguing and presenting of cases, as well as in their decisions. *Id.*

Accordingly, in cases where an Ohio appellate court does not follow its own established decisions for no apparent reason and also misapplies decision of other Courts and the Ohio Supreme Court, the ruling must be corrected to maintain stability in the law.

As explained above, the Tenth District here misapplied decisions from this Court and ignored its own prior decision. This grave error led the Court to not only vacate the Trial Court's dismissal, but to instruct the Trial Court to enter judgment in favor of Griffith. If the Tenth District's erroneous decision is not reviewed, this case would leave workers' compensation claimants guessing as to the proper application of the basic workers' compensation principle of

an injury being compensable only if it occurs in the scope of and arises out of employment. This Court should exercise jurisdiction over this case to correct the potential for jurisprudential uncertainty.

II. STATEMENT OF THE CASE AND FACTS

A. Procedural Posture

This case involves a workers' compensation appeal filed into the Franklin County Court of Common Pleas by City of Miamisburg police officer, Appellee, Craig Griffith. His workers compensation claim arises out of an injury that occurred during a May 8, 2006 pick up basketball game while Griffith was in Columbus to attend a motor vehicle accident investigation course.

Griffith's claim was allowed by the Industrial Commission Staff Hearing Officer and following Miamisburg's appeal to court, both Griffith and Miamisburg filed motions for summary judgment. On June 23, 2008, the Trial Court rendered its Decision, denying Griffiths Motion and granting Miamisburg's Motion. (*See* Trial Court Decision, attached here as Exhibit 1 of Appendix). Thereafter, Griffith filed an appeal to the Tenth District Court of Appeals. In an opinion and entry dated December 16, 2008, the Court of Appeals reversed the Trial Court's decision and remanded the case back to the Trial Court to enter judgment in favor of Griffith. (*See* Appellate Decision, attached here as Exhibit 2 of Appendix). Miamisburg now files a Notice of Appeal and this Memorandum in Support of Jurisdiction requesting the Court of Appeals' decision be vacated and the Trial Court's dismissal of the underlying case be reinstated.

B. Statement of Facts

The general facts surrounding this case are undisputed. Craig Griffith is a police officer with the City of Miamisburg. In the spring of 2006, he was given the opportunity to attend a two week technical crash investigation course at the Ohio State Highway Patrol Training Academy (OPTA) in Columbus Ohio. The training occurred daily between 8:00 a.m. and 5:00 p.m., with

dinner being served between 4:45 to 6:00 p.m. After 6:00 p.m. Griffith was free to do whatever he wanted until the start of classes at 8:00 a.m. the next morning.

After dinner on May 8, 2006, Griffith decided to use the workout facilities on-site at the Academy. After using the weight room, he walked through the gymnasium and chose to join a pick up game of "two on two" basketball. After playing for about ten minutes, Griffith jumped for a rebound and as he landed and planted his foot to dribble, his right foot slipped and he injured his knee sustaining a tear to his right patellar tendon.

III. ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

A. First Proposition of Law

> Under the traveling employee doctrine, a claimant's participation in a pick-up basketball game after the conclusion of a day's scheduled activities is a purely personal errand, outside the course of his employment.

The Court of Appeals' decision contains several errors and is inconsistent with prior holdings in Ohio workers' compensation cases involving "traveling employees". The Court of Appeals' first mistake is making a distinction between a traveling employee who is injured during a personal mission away from the jobsite, and a traveling employee who is injured while on the jobsite. In fact, the case law demonstrates that whether an employee is injured on or off-premises is not the determining factor, it is just one factor that Courts consider in reviewing whether an injury is compensable.

It is well-settled that in order to be entitled to workers' compensation benefits, an employee must prove that his injury was received both in the course of, and arising out of his employment. Ohio Rev. Code §4123.01(C); *Fisher v. Mayfield* (1990) 49 Ohio St. 3d 274, 277-278, 551 N.E. 2d 1271. The statutory requirement that an injury be in the course of employment involves the time, place and circumstances of the injury. *Fisher*, at 277. Griffith argues that his

injury occurred in the course of his employment by analyzing the test for compensation within the context of a "traveling employee." Miamisburg does not dispute that Griffith was a traveling employee and in fact, the Court of Appeals states, "Griffith was undisputedly a traveling employee at the time of his injury."

A "traveling employee" is an employee whose work involves travel away from the employer's premises. *Pascarella v. ABX Air, Inc.*, Clinton App. No. CA98-01-002, 1998 WL 468810, citing Larsons, *Workers' Compensation Law* (1997) 5-286, Section 25.00. A traveling employee may be within the course of his employment continuously during the trip, except when a distinct departure on a personal errand or pursuit is shown. *Id.* at 4. In fact, the Tenth District has previously refused to apply the "traveling employee" doctrine where "it is urged as a means to find injuries compensable that occurred during an employment-related out-of-town trip, but while the employee was engaged in what is a purely personal mission." *Cline v. Yellow Transportation, Inc. et al.*, Franklin App. No. 07AP-498, 2007 Ohio 6782.

Here, the Tenth District Court of Appeals spends a significant amount of time citing to a myriad of cases (*Elass v. Commercial Carriers, Inc.* (1992) 73 Ohio App. 3d 112, 596 N.E. 2d 599; *Richardson v. v. Conrad,* Franklin App. No. 03AP-913, 2004-Ohio-1340; and *Marbury v. Indus. Comm.* (1989) 62 Ohio App. 3d 786, 577 N.E. 2d 672) to support its holding that a "traveling employee" who is injured during a personal mission away from the jobsite is distinguishable from a traveling employee who is injured while on the jobsite. However, the Courts in these cases do not even apply the traveling employee doctrine in their analysis.

To be sure, the Court of Appeals admits that none of the cases it cites relating to "off-premises" employees were decided based simply on the fact that the claimants were away from

the premises when they were injured.[1] The Courts in *Elass, Richardson* and *Marbury* all decided these case based on the *Lord* factors and the totality of the circumstances and concluded that the alleged industrial injuries were not compensable because they did not arise from the claimants' employment. The Courts did not (at least not exclusively) determine that the injuries were not sustained in the course of their employment because they were sustained off-site. The Court of Appeals clearly confused the application of the traveling employee doctrine in its analysis of the "in the course of" prong.

The Court of Appeals' next mistake is finding "neither the fact that Griffith was on his free time nor that Griffith was engaged in recreational activity dispositive of whether he was in the course of his employment." (Appellate Decision, ¶ 21.) Since there is no dispute that Griffith was a traveling employee when he was injured, the "traveling employee" doctrine applies and the correct and only issue to determine in the "in the course of" prong is whether Griffith was on a personal mission when he was injured. Thus, the fact that he was on his free time and engaged in recreational activity *is in fact* dispositive of whether he was in the course of his employment. (*See Pascarella* and *Cline, supra.*).

The Court of Appeals again cites to a number of non-traveling employee cases to support its proposition that the fact that Griffith was on his free time and engaged in recreational activity is not dispositive of whether he was in the course of his employment. (*Elass; Masden v. CCI Supply, Inc.*, Montgomery App. No. 22304, 2008-Ohio-4396; *Kohlmayer v. Keller* (1970) 24 Ohio St. 2d 10). However, a review of actual "traveling employee" cases demonstrate the clear error of the Court.

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[1] In ¶11 of the Court's opinion, it states, "like in *Elsass,* [the *Richardson* Court] did not expressly discuss the traveling-employee doctrine.

For instance, in its review of the *Pascarella* case, the Court of Appeals states that Griffith's situation is akin to that of the pilot-claimant in *Pascarella*. *Pascarella v. ABX Air, Inc., supra.* (Appellate Decision, ¶23). In *Pascarella*, the claimant piloted an airplane from Wilmington, Ohio to Tampa, Florida on October 24, 1998. *Pascarella*, p. 1. He had a three-day layover planned in Tampa as he was not scheduled to return to Wilmington until the night of October 31, 1998. Shortly after arriving in Tampa on October 28, he checked into the hotel assigned to him by the employer. *Id.* However, while still keeping his hotel room, he returned to the Tampa airport later that day and flew home to Ohio. After spending the weekend in Ohio with his family, claimant returned to Tampa the morning of October 31 and went back to the hotel to reclaim his room. Upon arrival, he found his room had been reassigned so he was given a different room with a balcony. It was when he attempted to open the balcony door of his hotel room that he was injured. *Id.*

In Griffith's case, the Court of Appeals completely misinterpreted the holding in *Pascarella* and states that the *Pascarella* court "noted that neither a required layover period nor recreational activities during the wait for resumption of actual duties constitutes a breach in a traveling employee's employment relationship." (Appellate Decision, ¶23). In fact, the *Pascarella* Court stated just the opposite and held that under the "traveling employee" doctrine, Pascarella was in the course of his employment the entire time he was traveling except when he was on a personal errand. *Pascarella*, p. 5. "Pascarella was on a personal errand when he flew to Dayton to see his family ***. However, once Pascarella returned to the Radisson to wait for his return flight, the personal errand ended. Pascarella was again in the course of employment." *Pascarella*, at p. 5. If the Court of Appeals had applied the law in *Pascarella* correctly, it would

have found that Griffith, like Pascarella, was on a personal errand when he veered from his scheduled day and decided to go to the gym and join a pick-up basketball game.

In reversing the Trial Court decision below, the Court of Appeals even ignored its own holding in another traveling employee case, *Cline v. Yellow Transportation, Inc. et al.*, Franklin App. No. 07AP-498, 2007 Ohio 6782. In *Cline*, after arriving at his employer's terminal, a truck driver was required to rest for ten hours before carrying another long distance load. *Id.* at 2. Under company rules, the truck driver was allowed to drive the company tractor to a hotel that was paid by the trucking company; however, he was not permitted to drive the company truck to an eating establishment unless there were none within walking distance. *Id.* at 4. The truck driver was injured when he was struck by a car going 35 miles per hour as he was crossing the street from the hotel to a restaurant. *Id.* at 5. The Court found the truck driver "was on a personal errand when he was injured, and was not engaged in activity that benefited [his employer] or furthered its business" and thus the "traveling employee" doctrine did not apply. *Id.* at 20.

In this case, Griffith was sent to the Academy to participate in a technical crash investigation course. (Griffith Dep., p. 33) The unquestionable facts demonstrate he was not injured during classes at the training academy, or while participating in activities mandated by the training program, or even while at the dining hall during a meal. Rather, he was injured when he chose to join a pick up game of basketball during his free time. The Trial Court found that Griffith was on his free time when his injury occurred and it was completely within his control as to how he decided to use that free time. Playing basketball was not the reason that Plaintiff traveled to the facility, nor was it the reason he was paid to be there. "Playing

basketball was purely personal in nature and the traveling employee rule does not serve to make Plaintiff's injury compensable." (Trial Court Decision, p. 12).

Although the Court of Appeals does not dispute the holding in *Cline* (see ¶15 of Appellate Decision), it declines to follow this and other traveling employee cases and instead relies on non-traveling employee cases. For instance, the Court cites to *Kohlmayer v. Keller* (1970) 24 Ohio St. 2d. 10 and *Columbia Gas of Ohio, Inc. v. Sommer* (1974) 44 Ohio App. 2d 69 and states that "Ohio courts also have recognized that recreational activity is not, by its very nature, outside the course of an employee's employment." (Appellate Decision, ¶24.). These cases are irrelevant to the "in the course of" analysis in Griffith's case because they have nothing to do with whether a traveling employee was on a personal mission when he was injured.

The Court of Appeals not only applies the incorrect line of cases to Griffith's case, it ignores traveling employee cases, even from its own jurisdiction. The Court of Appeals should have followed its own established precedent and ruled as it did in *Cline*.

B. **Second Proposition of Law**

> The Court of Appeals should have affirmed the Trial Court's decision because the totality of the circumstances do not establish the requisite causal connection between Griffith's injury and his employment.

The Court of Appeals again ignored a case directly on point when it erroneously analyzed the "arising out of" prong of the test for compensability in Ohio workers' compensation claims. In a case extremely similar to Griffith's, the Ninth District Court of Appeals barred workers' compensation benefits to a State Trooper who was also injured playing pick up basketball at the YMCA. *Young v. State Highway Patrol Department of Administrative Services, et al.* (9th Dist. 2007) 2007 WL 4554194. The Court found the Trooper was not engaged in the performance of his duties, nor was he required by his employer to be present at the basketball court. *Id.* The

Court expressly held that his employer "did not require him to participate in the basketball game by virtue of his employment and [his employer's] general fitness requirements do not establish a causal connection between the employment and every injury that may occur to a trooper in the course of physical activity." *Id.* at 12. A "remote causal connection" between an injury and the fitness requirements of an employer "is too tenuous to constitute a compensable workers' compensation claim." *Id.*

Like the State Trooper in *Young*, Griffith's injury occurred while he was participating in a pick up basketball game during his free time from employment. Griffith was not engaged in an activity consistent with his contract for hire and logically related to the business of the Miamisburg Police Department; nor did the City of Miamisburg require him to participate in the basketball game by virtue of his employment. Rather, he was on his evening break when he voluntarily chose to join a pick up game of basketball. Just as the Ninth District found the facts warranted summary judgment in favor of Young's employer, so should this honorable Court affirm the Trial Court's award of summary judgment in favor of the City of Miamisburg.

The Court of Appeals states that *Young* is distinguishable from this case because the *Young* claimant was not a traveling employee at the time of his injury. (Appellate Decision, ¶33.). Although Miamisburg appreciates the Court of Appeals' attempt to finally review this case in the context of a traveling employee, the traveling employee doctrine and the personal errand exception are used to analyze the "in the course of" prong of the test for compensability, not the "arising out of" prong. As such, this distinction is unwarranted.

The Court of Appeals makes another fundamental mistake when it further attempts to distinguish *Young* from Griffith's case by stating, "unlike the *Young* claimant who was on his day off from work and had complete control over his free-time activities, Griffith was

constrained by appellee's [City of Miamisburg] encouragement that he remain on the academy premises while away from home and was, therefore limited to the activities and facilities available to trainees at the academy." (Appellate Decision, ¶34). Contrary to the Court's statement, the undisputed fact is that although Griffith may have been encouraged to stay onsite during his training in Columbus, he was free to do whatever he wanted after the scheduled events ended on 6:00 p.m. As such, the circumstances surrounding Griffith's basketball injury is not unlike *Young's* basketball injury. Clearly, the Court of Appeals should have applied the law set forth in *Young*.

Generally, in determining whether an employee's injuries "arise out of" his employment, the "totality of the circumstances" must be considered to determine whether a sufficient causal connection exists between the injury and the employment to justify the claimant's participation in the Workers' Compensation Fund. *Ruckman v. Cubby Drilling, Inc.* (1988) 81 Ohio St. 3d 117, at 122, *citing Fischer,* 49 Ohio St. 3d at 278. The totality of the circumstances test requires an examination of (1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident. *Lord v. Daugherty* (1981) 66 Ohio St. 2d 441, 444. As the Trial Court makes clear in its Decision, the totality of the circumstances indicate Griffith's injury did not arise out of his employment and therefore he is not entitled to participate in the Workers' Compensation Fund. (Trial Court Decision, p. 9). Unfortunately, the Court of Appeals decided not to follow the *Young* Court's application of the *Lord* factors and instead erroneously found that there was a sufficient causal connection between Griffith's injury and his employment.

Addressing the first prong regarding "proximity of the scene to the place of employment," it is undisputed that Griffith was in Columbus, far away from his permanent job location in Miamisburg. In its analysis, the Court of Appeals first decides that the training facility in Columbus was the location of Griffith's last employment. (Appellate Decision, ¶30). The Court then is not certain of Griffith's employment location and further contends that "even were we to find that the academy did not constitute Griffith's employment premises for the duration of the training course, we do not find that the scene of Griffith's injury was too far removed in time, space, and purpose from his last employment to find a causal connection between the injury and the employment." (Appellate Decision, ¶30). This confusion is unnecessary because "place of employment" is not an ambiguous term. It is clear that Griffith was in Columbus when he was injured and Columbus is no where proximate to his place of employment in Miamisburg.

With regards to the second prong, the Court of Appeals mistakenly found that Miamisburg "did exercise some control over Griffith's presence at the academy by authorizing Griffith's attendance, encouraging Griffith to remain at the academy throughout the course, including his free time, and refusing to reimburse Griffith for his costs were he to leave the facility for alternative meals, lodging or entertainment." (Appellate Decision, ¶31). It is important to note here that the Court states that Miamisburg exercised "some" control. In comparison to the facts weighing in Miamisburg's favor, Miamisburg most definitely did not own or operate any of the facilities at the Ohio State Patrol Academy in Columbus, and had no control over the site where the injury occurred. Griffith in fact basically conceded this prong in his Appellate Brief, setting forth no defense except to simply state, "Miamisburg exercised control over Appellant Griffith's presence at the Training Academy.

The Court of Appeals made its final mistake when it found that Miamisburg derived multiple benefits from his presence at the training facility, including (1) a police officer saving his employer money by staying at the training academy, (2) staying on-site facilitated more efficient training, and (3) a police officer trying to remain physically fit. (Appellate Decision, ¶32). As to all of these "benefits", the Court failed to acknowledge one key fact: at the time of Griffith's injury, he was not engaged in any activity remotely relating to the investigation of motor vehicle accidents. He was playing pick up basketball. The *Young* court expressly addressed this issue and held that the remote connection between the City's physical fitness requirements and an injury playing pick up basketball is "too tenuous to constitute a compensable injury." *Young, supra., p.* 12.

As the Court of Appeals did in its erroneous application of the "in the course of" prong, it again mistakenly distinguishes a case directly on point in its analysis of the "arising out of" prong. The facts of *Young* are in line with the facts of this case, and a correct review of the totality of the circumstances could only have led to the conclusion that Griffith's injury did not arise out of his employment with the City of Miamisburg.

IV. CONCLUSION

Without question, this case raises issues of great public and general interest. The fundamental crux of Worker's Compensation cases are whether injuries are sustained "in the course of" and "arise out of" a claimant's employment. The Court of Appeals clearly misinterpreted cases directly on point to the facts of Griffith's case. If this Court does not take jurisdiction, the issues raised in this case will arise time and again, especially in traveling employee cases and the lower courts will be confused as to the applicability of previously settled law.

For these reasons as well as all the other reasons expressed previously, this court should accept this action for jurisdiction, vacate the decision of the Court of appeals and reinstate the Trial Court's dismissal of this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing was served via ordinary U.S. Mail, postage prepaid, this 29th day of January, 2009, upon:

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APPENDIX

Exh. 1 Trial Court Decision and Entry, June 23, 2008

Exh. 2 Tenth District Court of Appeals, Decision and Entry, December 16, 2008

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

CRAIG D. GRIFFITH,	:	
Plaintiff,	:	
vs.	:	Case No. 07CVD11-15534
CITY OF MIAMISBURG, et al.,	:	Judge Cain
Defendants.	:	

REC'D JUN 26 2008

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
2008 JUN 24 AM 10:00
CLERK OF COURTS

DECISION DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED APRIL 11, 2008

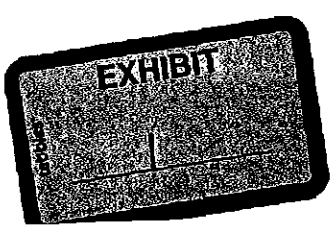
DECISION GRANTING DEFENDANT'S, CITY OF MIAMISBURG, MOTION FOR SUMMARY JUDGMENT, FILED MAY 8, 2008

Rendered this 23rd day of June 2008.

CAIN, J.

This matter is before this Court on cross Motions for Summary Judgment. Plaintiff filed his Motion for Summary Judgment on April 11, 2008. Defendant, City of Miamisburg (hereinafter "Miamisburg"), filed its Memorandum in Opposition on May 8, 2008. Plaintiff filed his Reply Memorandum on May 15, 2008. Miamisburg filed its Motion for Summary Judgment on May 8, 2008. Plaintiff did not file a reply to this motion.[1] These two motions are now ripe for decision.

The present action is one to determine whether Plaintiff is entitled to receive workers' compensation benefits for injuries that allegedly occurred while he was in the scope of his employment. The basic facts of this case are not in dispute. Plaintiff is a police officer that has worked for Miamisburg since 2002. In May of 2006 Plaintiff was in Columbus, Ohio attending a two-week motor vehicle



crash investigation course being conducted at the Ohio State Highway Patrol training facility (hereinafter the "Facility"). Plaintiff was voluntarily attending this training course at the request of Miamisburg. While attending the training course, Plaintiff stayed at the Facility and generally did not leave the grounds of the Facility.

On May 8, 2006, after the days training session had concluded, Plaintiff decided to exercise. Plaintiff ended up going to the Facility's weight room in order to lift weights. While traveling to the weight room, Plaintiff noticed that there were people in the Facility's gym playing pick up games of basketball. After lifting weights for a time, Plaintiff decided to join one of these games. Plaintiff subsequently joined three other individuals to play a game of two-on-two basketball.

It is at this point that Plaintiff's present claim started to take shape. Earlier in the day there had been a taser demonstration in the gym in which Plaintiff was playing basketball. When a taser is fired, things known as cartridge jackets explode out of it. During this earlier demonstration, numerous of these cartridge jackets accumulated on the gym's floor. It appears that these cartridge jackets were not adequately cleaned up after the demonstration and some remained on the gym floor while Plaintiff was playing basketball. As a result, Plaintiff stepped on one of these remaining cartridge jackets, causing him to twist his right knee and sustain a patellar tendon rupture.

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[1] Miamisburg's motion made the same arguments that Miamisburg made in its Memorandum in Opposition. There was no real reason for Plaintiff to file a reply to it.

After sustaining this injury, Plaintiff filed for benefits with the Ohio Bureau of Workers' Compensation (hereinafter the "BWC"). The BWC reviewed Plaintiff's claim and allowed it for the condition of right knee patellar tendon rupture. Miamisburg appealed this decision. Upon appeal, the Ohio Industrial Commission affirmed Plaintiff's benefit allowance. Thereafter, Miamisburg filed the present action challenging Plaintiff's entitlement to BWC benefits. Since there are no factual disputes in this matter, both sides of this case have filed Motions for Summary Judgment. It is now upon the Court to determine whether Plaintiff's injury meets the base requirements in order for him to be entitled to BWC benefits.

Summary judgment was established through Civ. R. 56 as a procedural device to terminate litigation when there is no need for a formal trial. Norris v. Ohio Std. Co. (1982), 70 Ohio St. 2d 1. The rule mandates that the following be established: (1) that there is no genuine issue of any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion and, viewing the evidence most strongly in favor of the non-moving party, that conclusion is adverse to the non-moving party. Bostic v. Connor (1988), 37 Ohio St. 3d 144.

Summary judgment will not be granted unless the movant sufficiently demonstrates the absence of any genuine issue of material fact. A "party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine

issue of material fact on the essential element(s) of the nonmoving party's claims." Dresher v. Burt (1996), 75 Ohio St. 3d 280, 293. Civ. R. 56(C) sets forth an exclusive list of documentary evidence that a court may consider when reviewing a motion for summary judgment.

In accordance with Civ. R. 56(E), when a properly supported motion for summary judgment is made, the nonmoving party may not rest upon the mere allegations or denials contained in the pleadings but must come forward with specific facts demonstrating a genuine issue of fact for trial. If the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against him.

In order to be entitled to BWC benefits, the injury must occur within the course and scope of the claimant's employment. "An injury sustained by an employee is compensable under the Workers' Compensation Act only if it was 'received in the course of, and arising out of, the injured employee's employment.'" Bralley v. Daugherty (1980), 61 Ohio St. 2d 302, 303; *citing to* R.C. 4123.01(C). "The test of the right to participate in the Workers' Compensation Fund is not whether there was any fault or neglect on the part of the employer or his employees, but whether a "causal connection" existed between an employee's injury and his employment either through the activities, the conditions or the environment of the employment." Id.

The application of the above standard is not always cut and dry. Due to this, the Ohio Supreme Court has developed a basic framework from which Ohio courts can take guidance.

> As this court stated in *Fisher v. Mayfield* (1990), 49 Ohio St. 3d 275, 277, 551 N.E.2d 1271, 1274, the statutory requirement that an injury be in the course of employment involves the time, place, and circumstances of the injury. Time, place, and circumstance, however, are factors used to determine whether the required nexus exists between the employment relationship and the injurious activity; they are not, in themselves, the ultimate object of a course-of-employment inquiry.
>
> The phrase "in the course of employment" limits compensable injuries to those sustained by an employee while performing a required duty in the employer's service. *Indus. Comm. v. Gintert* (1934), 128 Ohio St. 129, 133-134, 190 N.E. 400, 403. "To be entitled to workmen's compensation, a workman need not necessarily be injured in the actual performance of work for his employer." *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693, 36 Ohio Op. 282, 76 N.E.2d 892, paragraph three of the syllabus. An injury is compensable if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business. *Kohlmayer v. Keller* (1970), 24 Ohio St. 2d 10, 12, 53 Ohio Op. 2d 6, 7, 263 N.E.2d 231, 233.

Ruckman v. Cubby Drilling Inc. (1998), 81 Ohio St. 3d 117, 120. The Supreme Court further stated:

> In *Fisher, id.* at 277, 551 N.E.2d at 1274, this court reaffirmed use of the *Lord v. Daugherty* (1981), 66 Ohio St. 2d 441, 20 Ohio Op. 3d 376, 423 N.E.2d 96, "totality of the circumstances" test to determine whether there exists a sufficient causal connection between injury and employment to justify a claimant's participation in the fund. That test requires primary analysis of the following facts and circumstances: "(1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." *Id.* at the syllabus.

Id. at 121. This three-factor test is often referred to as the "Lord" test. It is pursuant to the considerations laid out above that the Court will now examine

whether Plaintiff's injury was sustained in such a way so as to entitle him to BWC benefits.[2]

In his motion, Plaintiff provides the Court with three main arguments as to why he feels he is entitled to BWC benefits. The first of these arguments is that when the totality of the circumstances is considered, the Court can only determine that Plaintiff's injury arose in the course and scope of his employment. Plaintiff basically argues that his injury satisfies the Lord test.

Plaintiff's basic argument is as follows. It is undisputed that at the time Plaintiff's injury occurred he was not in any training class at the Facility, but was instead on his free time and playing recreational basketball. Even with this established, Plaintiff argues his injury occurred within the scope of his employment. Plaintiff argues that his injury occurred on the Facility's premises, for which he was there for the purpose of attending a training course to aid in his employment at Miamisburg. Since this was so, Plaintiff argues that no matter where he was or what he was doing in the Facility, he was doing it for the benefit of Miamisburg. Plaintiff argues that since he never left the Facility, he was constantly under Miamisburg's control and therefore was always in the course and scope of his employment. Further, Plaintiff argues that as a condition of his employment he was required to keep himself in good physical shape. Plaintiff argues that he was satisfying this condition of his employment at the time of the accident and was hence, in the scope of his employment. Finally, Plaintiff argues

[2] Even though both sides of this case have filed Motions for Summary Judgment, the Court will approach this matter based upon the arguments made in Plaintiff's motion and Miamisburg's counterarguments to that motion.

that when all of these factors are looked at together, he satisfies the mandates of the Lord test.

Contrary to Plaintiff's belief, when viewing the facts of this case pursuant to the Lord test, it is clear to the Court that Plaintiff was not in the course and scope of his employment when his injury occurred. As noted above, the factors that the Court needs to consider are "(1) the proximity of the scene of the accident to the place of employment, (2) the degree of control the employer had over the scene of the accident, and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." Ruckman at 121. These three factors are not intended to be all-inclusive, but in the present case Plaintiff satisfies none of them. As such, there is no real reason for the Court to look to any other factors.

As to the first two prongs of the Lord test, Plaintiff is unable to satisfy them. First, Plaintiff works in Miamisburg, Ohio. The Facility is located in Columbus, Ohio. These two locations are some eighty miles apart. The scene of the accident is nowhere near Plaintiff's place of employment. As such, Plaintiff fails to meet the first prong of the Lord test. Second, while Plaintiff was at the Facility at the request of Miamisburg, Miamisburg had absolutely no control over the Facility. The Ohio State Highway Patrol ran the Facility. It was also conducting the training course that Plaintiff was attending. Miamisburg had absolutely no control over the scene of the accident, *i.e.* the Facility, nor did it have control over what Plaintiff did at the Facility. Plaintiff fails to meet the second prong of the Lord test.

This brings the Court to the third prong of the Lord test. The question now is: Did Miamisburg derive a benefit from Plaintiff being at the scene of the accident, *i.e.* on the basketball court? There is no dispute over the fact that Miamisburg received a benefit from Plaintiff being at the Facility while training was being conducted. However, with this being said, it is clear that Miamisburg derived no benefit from Plaintiff playing basketball at the Facility. At the time of the accident, Plaintiff was on his free time. Training had concluded for the day. Whether Plaintiff played basketball or not was completely within his control. If Plaintiff had chosen to not play basketball, Miamisburg would not have experienced any negative repercussions. On the flipside, Miamisburg experienced no benefit from Plaintiff choosing to play basketball.[3] Therefore, the Court can only hold that Plaintiff did not derive a benefit from Plaintiff playing basketball. Plaintiff fails to meet the third prong of the Lord test.

In their respective briefs, both Plaintiff and Miamisburg cite to many cases in order to show that their respective side is the right one to come down on. All of these cases, however, show the Court that there is no one proper way to apply the three prongs of the Lord test. Further, none of these cases give guidance as to what additional factors are appropriate for the Court to look at. Plaintiff's entire case boils down to the argument that his injury occurred on the same premises that he was receiving training at. Plaintiff actually concedes that if his injury had

[3] Plaintiff has argued that as a condition of employment he was required to keep fit and therefore, Miamisburg derived a benefit by him playing basketball. Not only does this requirement not establish any control by Miamisburg over Plaintiff's actions, the benefit derived is so remote that it does not bring Plaintiff's basketball playing within the scope of his employment. If that were the case, every time Plaintiff exercised he would be within the scope of his employment. This result would be absurd.

happened off the Facility's premises, it would not be compensable. The Court sees no difference between on premises and off premises. Plaintiff was on his free time at the time of the accident. It was completely in Plaintiff's control as to how he decided to use his free time. Miamisburg had no control over the Facility. Miamisburg derived no benefit from Plaintiff playing basketball. The totality of the circumstances shows that Plaintiff's injury did not arise within the course and scope of his employment. As such, Summary Judgment must be awarded in Miamisburg's favor.

Plaintiff's second main argument in favor of his entitlement to BWC benefits is that his injury was caused by a special hazard of his employment. While the Court stated earlier that it does not feel it needs to look at any other factors then those stated in the Lord test, for the sake of being thorough the Court will address Plaintiff's further arguments. Whether a special hazard in relation to an individual's employment exists is a factor that many Ohio courts have looked at outside the three primary factors iterated in the Lord test. Plaintiff argues that the Facility was like a military camp in the way it was set up. He argues that the hazard posed by the taser cartridge jackets on the floor would be present at no other place but the Facility. As such, Plaintiff argues that due to the fact that he was staying at the Facility during the entire training course, he was subjected to a special hazard that a common person would not be exposed to. Therefore, Plaintiff argues his injury occurred within the scope of his employment.

While the Court is aware that special hazards posed by a particular job can be taken into consideration when determining if an employee was within the scope of his/her employment at the time of an accident, this fact does not aide Plaintiff. The Court is hard pressed to see how Plaintiff was at any time subject to a special hazard. The allegation that the Facility was like a military camp is meaningless to the Court. The Facility being like a military camp and Plaintiff slipping while playing basketball are wholly unrelated. Furthermore, the fact that Plaintiff slipped on taser cartridge jackets rather then something else does not create a special hazard. The Court cannot see the difference between taser cartridge jackets on the Facility's gym floor and any other object on the floor of a different gym. The hazard to Plaintiff posed by the taser cartridge jackets on the Facility's gym floor is no greater then the hazard that a normal person would experience from small objects being left on a gym floor. Plaintiff's injury did not arise from a special hazard, but rather from the fact that someone failed to adequately clean up after themselves. Plaintiff's second argument fails.

Plaintiff's third and final argument as to why he is entitled to BWC benefits is that he was a traveling employee and was therefore constantly within the scope of his employment. This argument fails at its outset. In the case of Cline v. Yellow Transportation, Inc. (Franklin, 2007), 2007 Ohio 6782, cited by Plaintiff, the Ohio Tenth District Court of Appeals presented a summary of the law concerning the traveling employee rule. In its opinion, the Tenth District stated:

> "An employee's failure to satisfy the three enumerated factors of the *Lord* test, however, does not foreclose further consideration. When applying the *Lord* test the enumerated factors are not intended to be exhaustive and the totality-of-the-circumstances test

may continue to evolve. * * * [N]o one test or analysis can be said to apply to each and every factual possibility." Id. at 122.

"The Act is not meant to impose a duty on an employer as an absolute insurer of the employee's safety. Rather, the Act is intended to protect employees against the risks and hazards incident to the performance of their duties. * * * The mere fact that an injury occurred during employment is not sufficient to establish entitlement to benefits." *Carrick v. Riser Foods* (1996), 115 Ohio App.3d 573, 577, 685 N.E.2d 1261. At the time of the injury, the employee must be performing a required duty done directly or incidentally in the service of the employer as opposed to personal business, disconnected with the employment. *Fletcher v. Northwest Mechanical Contractors, Inc.* (1991), 75 Ohio App.3d 466, 471, 599 N.E.2d 822, citing *Indus. Comm. v. Ahern* (1928), 119 Ohio St. 41, 6 Ohio Law Abs. 385, 162 N.E. 272, paragraphs two and three of the syllabus.

In support of his assignments of error, appellant argues that the trial court narrowly focused on the three enumerated *Lord* factors and refused to consider the totality of the circumstances, including appellee's prohibition of appellant driving the company-owned tractor if food could be obtained within walking distance, the benefit that having a rested driver afforded appellee, the fact that appellee was only out of town because of his work, and the benefit appellee received from appellant staying at that particular hotel.

Appellant argues that his injuries occurred on the employer's premises because he is a "traveling employee" whose injuries always arise out of his employment while he is out of town between runs, so long as they are not sustained while he is on a purely personal errand. We have considered the "traveling employee" doctrine as a possible exception to the "coming and going rule," which ordinarily precludes coverage for injuries sustained when an employee is traveling to or from a fixed site where they perform their employment duties. See, e.g., *Freeman v. Brooks,* 154 Ohio App.3d 371, 2003 Ohio 4814, 797 N.E.2d 520.

But we have refused to adopt the "traveling employee" doctrine where, as here, it is urged as a means to find injuries compensable that occurred during an employment-related out-of-town trip, but while the employee was engaged in what is a purely personal mission. See, e.g., *Budd v. Trimble* (Dec. 22, 1994), Franklin App. No. 94APE04-589, 1994 Ohio App. LEXIS 5854...

...

> The Supreme Court of Ohio has recognized the applicability of the "traveling employee" doctrine in cases where it is the work-mandated traveling itself that not only occasions the injury but is the very object of the employment and the primary duty for which the employee is paid (for instance, if, in this case, appellant had been injured in his tractor-trailer while actually hauling a load). See, e.g., *Indus. Comm. v. Heil* (1931), 123 Ohio St. 604, 10 Ohio Law Abs. 190, 176 N. E. 458; *Lohnes v. Young* (1963), 175 Ohio St. 291, 25 O.O.2d 136, 194 N.E.2d 428.

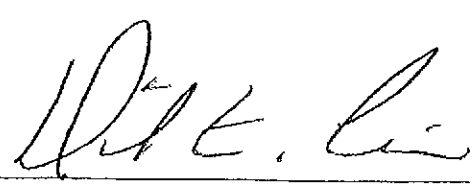
Id. at ¶¶14-18, 21. As the Court has stated earlier, Plaintiff was on his free time when his injury occurred and it was completely within Plaintiff's control as to how he decided to use that free time. Playing basketball was not the reason that Plaintiff traveled to the Facility, nor was it the reason he was paid to be there. Playing basketball was purely personal in nature and the traveling employee rule does not serve to make Plaintiff's injury compensable. Summary Judgment must be awarded in Miamisburg's favor.

After review and consideration, the Court finds Plaintiff's motion to be not well-taken and Defendant's, City of Miamisburg, motion to be well-taken, and hereby rules as follows.

Plaintiff's Motion for Summary Judgment is hereby DENIED.

Defendant's, City of Miamisburg, Motion for Summary Judgment is hereby GRANTED. Counsel for Defendant, City of Miamisburg, shall prepare, circulate and submit a judgment entry reflecting this decision to the Court within five days of the filing of this decision in accordance with Loc. R. 25.01.

IT IS SO ORDERED.



David E. Cain, Judge

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Counsel for Defendant, City of Miamisburg

D8063 - F62

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Craig D. Griffith	Case No. 07CVD-11-15534
	Judge Cain
PLAINTIFF	
VS.	FINAL APPEALABLE ORDER
	JUDGMENT ENTRY
City of Miamisburg, et al.	TERMINATION NO. 18 BY
DEFENDANTS.	

This matter is before the Court on cross Motions for Summary Judgment. The Court having reviewed Plaintiff's Motion for Summary Judgment, Defendant City of Miamisburg's Memorandum in Opposition, Plaintiff's Reply and Defendant City of Miamisburg's Motion for Summary Judgment, and having issued a decision on June 24, 2008, this Court find Plaintiff's Motion to be not well-taken and Defendant's motion to be well-taken and rules as follows

IT IS HEREBY ORDERED, that Plaintiff Craig Griffith's Motion for Summary Judgment is DENIED and Defendant City of Miamisburg's Motion for Summary Judgment is GRANTED on the grounds that there is no genuine dispute of material fact. This Court finds, as a matter of law, that Plaintiff's injury did not arise within the course and scope of his employment

Costs to be paid by Plaintiff.

Pursuant to Civil Rule 54(B) there is no just reason for delay and this is a final and appealable judgment

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FRANKLIN CO. OHIO
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Judge Cain

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

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FRANKLIN COUNTY, OHIO
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CLERK OF COURTS

Craig D. Griffith,	:	
Plaintiff-Appellant,	:	
v.	:	No. 08AP-557 (C.P.C. No. 07CVD11-15534)
City of Miamisburg et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

O P I N I O N

Rendered on December 16, 2008

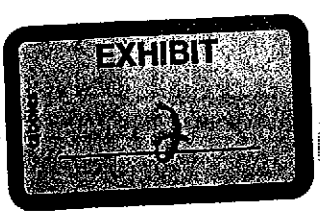
Hochman & Plunkett Co., L.P.A., Gary D. Plunkett, Brett Bissonnette, and *Amy Metcalfe*, for appellant.

Dinsmore & Shohl, LLP, and *Gary E. Becker*, for appellee City of Miamisburg.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Plaintiff-appellant, Craig D. Griffith ("Griffith"), appeals from the judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of defendant-appellee, City of Miamisburg ("appellee"), and denying Griffith's own motion for summary judgment concerning his entitlement to workers' compensation benefits. For the following reasons, we reverse the trial court's judgment.



{¶2} On May 8, 2006, Griffith, who was employed by appellee as a police officer, was attending a two-week motor vehicle accident investigation training course at the Ohio Highway Patrol training academy ("academy") in Columbus, Ohio. Appellee approved Griffith's attendance at the training, provided a car for his travel to and from the academy, paid Griffith his normal wages during the training period, and strongly suggested that Griffith remain at the academy throughout the duration of the training session. Timothy Hunsaker, a Miamisburg police officer who serves as appellee's training officer, testified that staying at the academy aids in successful completion of the training program. The highway patrol similarly encourages trainees to remain at the academy because it provides trainees with better resources to complete required, out-of-class activities. Appellee would not pay for Griffith's lodging or meals anywhere other than at the academy.

{¶3} The training course consisted of daily, formal training activities from 8:00 a.m. to 5:00 p.m., followed by dinner until 6:00 p.m. Although trainees were required to complete "homework" before the following day's classes, the period from 6:00 p.m. until 8:00 a.m. was otherwise the trainees' "own time." (Griffith Depo. 41.) After dinner on May 8, 2006, Griffith returned to his room, read some coursework, and walked down to the academy's workout facilities, which included a gymnasium with three basketball courts, a track, rooms with fitness equipment and free weights, and a swimming pool. After lifting weights for approximately 45 minutes, Griffith joined a basketball game.

While playing basketball, Griffith stepped on the jacket of a discarded taser cartridge,[1] twisted his right knee, and sustained a right knee patellar tendon rupture.

{¶4} Griffith filed an application for workers' compensation benefits for his injury. A district hearing officer denied Griffith's claim in an order dated July 5, 2006, but, on appeal, a staff hearing officer allowed the claim in an order dated September 1, 2006. After the Industrial Commission refused further review, appellee filed a notice of appeal in the Montgomery County Court of Common Pleas. Pursuant to R.C. 4123.512(D), Griffith filed a petition in that court alleging his entitlement to participate in the workers' compensation system. In accordance with an agreed entry filed September 11, 2007, the Montgomery County court transferred this action to the Franklin County Court of Common Pleas, where both Griffith and appellee filed motions for summary judgment. On June 24, 2008, the trial court denied Griffith's motion for summary judgment and granted appellee's motion for summary judgment, concluding that Griffith's injury did not occur in the course of and arising out of his employment, as required for participation in the workers' compensation fund. The trial court filed its final judgment entry on July 8, 2008, and Griffith appealed.

{¶5} Griffith asserts the following two assignments of error:

> 1. The trial court erred when it granted summary judgment in favor of [appellee] on [Griffith's] claim for the right to participate in the Ohio Workers' Compensation Fund for a right patellar tendon tear.
>
> 2. The trial court erred when it denied * * * Griffith's motion for summary judgment.

---

[1] The day's training had included taser training in the gymnasium. When tasers are fired, the cartridge jackets "explode off" the tasers and fall to the ground. (Griffith Depo. 60.) After his injury, Griffith noticed that more than 20 taser cartridge jackets remained on the gymnasium floor.

The sole issue presented, both in the trial court and on appeal, is whether Griffith is entitled to participate in the workers' compensation fund for the injury he sustained on May 8, 2006. Both of Griffith's assignments of error address this issue with interrelated arguments, and we address the assignments of error together.

{¶6} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶7} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶8} For purposes of the Ohio workers' compensation statutes, " '[i]njury' includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment." R.C. 4123.01(C). Thus, to be compensable under the workers' compensation fund, an employee's injury must be received in the course of, and arising out of, his or her employment. Id.; *Bralley v. Daugherty* (1980), 61 Ohio St.2d 302, 303. The Ohio Supreme Court has expressly recognized "the conjunctive nature of the coverage formula of 'in the course of and arising out of' the employment." *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277. In applying the statutory requirements, we remain mindful that the workers' compensation statutes should be liberally construed in favor of employees. R.C. 4123.95.

{¶9} The statutory requirement that an injury be in the course of employment relates to the time, place, and circumstances of the injury. *Fisher* at 277. An employee need not necessarily be injured in the actual performance of work for the employer. Rather, an injury is in the course of employment if sustained while the employee was engaged in activity that is consistent with the employee's contract of hire and that is logically related to the employer's business or incidental to the employment. *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117, 120, 1998-Ohio-455, citing *Kohlmayer v. Keller* (1970), 24 Ohio St.2d 10, 12; *Fisher* at 278, fn. 1, citing *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693, paragraph 13 of the syllabus. Ordinarily, the issue of whether an employee is acting within the course of employment is a question of fact. *Saunders v. Holzer Hosp. Found.*, 176 Ohio App.3d 275, 2008-Ohio-1032, ¶15, citing *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 334. However, where, as

here, the facts are undisputed and no competing inferences are possible, it becomes a question of law. Id. at 330.

{¶10} The statutory requirement that an injury arise out of employment refers to a causal connection between the employment and the injury. Id. Courts determine whether an employee's injury arose out of his or her employment from the totality of the circumstances, including the factors set forth in *Lord v. Daugherty* (1981), 66 Ohio St.2d 441. *Fisher* at 278-279. Those factors include the following: "(1) the proximity of the scene of the accident to the place of employment; (2) the degree of control the employer had over the scene of the accident; and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." *Lord* at 444. The factors listed in *Lord* are not exhaustive. They are merely illustrative of the facts to be considered under the totality of the circumstances. *Fisher* at 279, fn. 2. Because workers' compensation cases are fact specific, a flexible and analytically sound approach is preferable to hard and fast rules, which can lead to unsound and unfair results. Id. at 279.

{¶11} The trial court's analysis focused primarily on application of the three *Lord* factors. Ultimately, the court determined that Griffith failed to meet any of the three enumerated factors and that, "[a]s such, there [was] no real reason for the Court to look to any other factors." Nevertheless, the court went on to reject Griffith's arguments that his injury was caused by a special hazard of his employment and that he was within the course of his employment, as a traveling employee, at the time of his injury. Concluding as a matter of law that Griffith was not injured in the course of and arising out of his

employment, the trial court determined that Griffith's injury was not compensable and entered judgment in favor of appellee.

{¶12} Despite the trial court's primary reliance on the *Lord* factors, which concern the determination of whether a claimant's injuries arose out of his or her employment, i.e., whether a causal connection exists between the injury and employment, we first address whether Griffith sustained his injury in the course of his employment. An injury is in the course of employment if sustained in activity consistent with the employee's contract of hire and logically related to the employer's business or incidental to the employment. *Ruckman* at 120, citing *Kohlmayer* at 12; *Fisher* at 278, fn. 1. This determination requires consideration of the time, place, and circumstances of the injury. Id. at 277.

{¶13} In his motion for summary judgment, Griffith argued that his injury occurred in the course of his employment because he was a traveling employee at the time of his injury. The Twelfth District Court of Appeals described the "traveling employee" doctrine in *Pascarella v. ABX Air, Inc.* (Aug. 10, 1998), Clinton App. No. CA98-01-002, quoting 2 Larson, Workers' Compensation Law, Section 25.00, 5-286 (1997), stating that " '[e]mployees whose work entails travel away from the employer's premises are * * * within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown.' " This court, however, has rejected the proposition that an employee on a business trip is necessarily in the course of employment during his or her entire time away, stating that an employee on a business trip "does not have a special status for the purpose of coverage under the Ohio Workers' Compensation Law" and that entitlement to benefits should be

determined under the *Fisher* standard, requiring consideration of the time, place, and circumstances of the injury. *Budd v. Trimble* (Dec. 22, 1994), Franklin App. No. 94APE04-589. This court more recently clarified that it has refused to adopt the traveling-employee doctrine as a means to find injuries compensable where the injuries occurred during an employment-related trip, but while the employee was engaged in a purely personal mission or errand. *Cline v. Yellow Transp., Inc.*, Franklin App. No. 07AP-498, 2007-Ohio-6782, ¶18. See, also, *Lippolt v. Hague*, Franklin App. No. 08AP-140, 2008-Ohio-5070. This view is in line with the view of several other Ohio appellate districts. See *Roop v. Centre Supermarkets, Inc.* (Apr. 24, 1987), Lucas App. No. L-86-206; *Marbury v. Indus. Comm.* (1989), 62 Ohio App.3d 786; *Elsass v. Commercial Carriers, Inc.* (1992), 73 Ohio App.3d 112.

{¶14} Griffith was undisputedly a traveling employee at the time of his injury. His presence at the academy was intricately entwined with his employment as a Miamisburg police officer and benefited appellee by enhancing Griffith's ability to perform his job duties and enhancing appellee's ability to investigate serious automobile accidents independent of the highway patrol. Appellee authorized Griffith's attendance at the training, paid him his regular wages during the training, and provided him with a car to travel to and from the academy, where appellee strongly encouraged Griffith to remain for the duration of the training course. The trial court seemingly agreed that Griffith was a traveling employee but, in exclusive reliance on *Cline*, found that Griffith was engaged in purely personal activity at the time of his injury and was, therefore, outside the course of his employment. Like the trial court, appellee maintains that Griffith was on a personal errand when he was injured. We thus consider whether

Griffith's participation in a basketball game at the academy after the conclusion of the day's scheduled activities constituted a purely personal errand, outside the course of his employment.

{¶15} In *Cline*, on which the trial court relied to conclude that Griffith was not injured in the course of his employment, this court applied the personal errand exception to the traveling-employee doctrine. In that case, a truck driver filed a workers' compensation claim for injuries sustained when he was hit by an automobile while walking from his hotel to a restaurant during an unpaid, federally mandated, ten-hour rest period between long distance runs. During his rest period, the driver checked into a hotel, paid for by his employer, and slept for seven and a half hours before setting out on foot to a restaurant across the street. During rest periods, drivers were not permitted to drive to a restaurant if there was one within walking distance from the driver's hotel. Stating that the traveling-employee doctrine does not make injuries incurred during a personal mission compensable, this court analogized the driver's activity in *Cline* to activity deemed purely personal in *Elsass* and *Richardson v. Conrad*, Franklin App. No. 03AP-913, 2004-Ohio-1340. Ultimately, we found the driver's dinner trip akin to a personal errand that did not benefit his employer or further its business and, therefore, concluded that the driver's injuries did not occur in the course of his employment.

{¶16} In contrast, we find the circumstances surrounding Griffith's injury distinguishable from the personal errands in *Elsass* and *Richardson*, both of which involved injuries sustained while the claimants were traveling between their lodgings and remote establishments for dinner and entertainment not paid for by their employers. In *Elsass*, the claimant and two other truck drivers on a rest period between runs drank

several beers at their motel in Alexandria, Virginia, and then called a taxicab to transport them into Washington, D.C. to a restaurant with topless waitresses or nude dancing. The court found no error in the determination that the claimant's injury, sustained when the taxicab was involved in an automobile accident, did not occur in the course of the claimant's employment. The *Elsass* court did not discuss the traveling-employee doctrine but, instead, applied the *Lord* analysis and stated, "whether [the claimant] truly sought food, 'action,' or both, under these circumstances, he did so at his own peril. For in either instance, [the employer] received no benefit from [the claimant's] presence in Washington D.C. at 12:30 a.m." *Elsass* at 115.

{¶17} In *Richardson*, the claimant, a resident of Dayton, Ohio, was assigned by his employer to a construction project in Columbus. While the employer paid for the claimant's motel accommodations, it did not provide him with a car, reimburse him for mileage or pay for his meals. The claimant was injured in an automobile accident while returning to his motel from a restaurant ten miles away, where he and another employee watched a basketball game and ate dinner. Like in *Elsass*, this court did not expressly discuss the traveling-employee doctrine. However, the court noted that the claimant's use of a hotel in Columbus, only one to two hours from his home, was as much for his own convenience and benefit as for his employer's. The court also noted that the employer did not pay for the claimant's meals or have any control over the claimant's nightly arrangements and that the claimant's travel to and from the restaurant did not benefit the employer. Accordingly, the court concluded that the claimant was not entitled to participate in the workers' compensation fund.

{¶18} Other cases denying participation in the workers' compensation fund for injuries sustained during a business trip similarly involve travel away from the claimant's employment premises or employer-authorized lodging. See, e.g., *Callahan v. Proctor & Gamble Co.*, Allen App. No. 1-08-19, 2008-Ohio-4954 (employee in New Orleans for a national safety conference attended two post-conference receptions and then traveled with other employees to Bourbon Street, where she was injured when a bouncer knocked her down); *Roop* (claimant's decedent killed while walking back to hotel from a nightclub that he visited after the conclusion of the convention schedule, which ran from 7:00 a.m. until 11:00 or 11:30 p.m., and included breakfast, lunch, dinner, and a nightly hospitality gathering).

{¶19} Unlike the circumstances in those cases, Griffith was not injured in transit between his employment premises, lodging, and/or remote locations for food or entertainment. Indeed, Griffith's injury occurred on the same premises where his employer-authorized training was held, where he was provided room and board, and where appellee encouraged him to remain throughout the two-week training course. From the time of his arrival for the commencement of the training course, Griffith did not leave the academy until after his injury. Thus, this is not a case where the claimant traveled away from premises authorized by his employer to satisfy personal needs or desires, and we find this case distinguishable from *Cline* and the cases cited therein.

{¶20} In *Masden v. CCI Supply, Inc.*, Montgomery App. No. 22304, 2008-Ohio-4396, the court considered a scenario in which the claimant was injured on the premises of his employer-authorized motel while out of town on an employment assignment. Masden's employer sent him to work as a carpenter on a construction site

in Utica, Michigan, and required him to stay at a specific motel, selected and paid for by the employer. Masden filed a workers' compensation claim for injuries he sustained in a physical altercation with other motel guests that arose while he was resting in his motel room after work hours. The Second District Court of Appeals held that, as a traveling employee, Masden was in the course of his employment the entire time he was traveling except when he was on a personal errand. The court further found that Masden was not on a personal errand when he was injured in the physical altercation. The court stated that, "what is critical is that Masden was in Utica, Michigan at the direction of [his employer] in furtherance of [its] business, and he had no choice but to live in a lodging facility away from his own home. Accordingly, there is sufficient evidence showing the injury was sustained 'in the course of employment.' " Id. at ¶12. Similarly, here, Griffith was required to lodge away from home during the training course, which he attended with appellee's approval and for a purpose that would further appellee's business.

{¶21} Because Griffith was on his free time when injured and had discretion regarding the use of his free time, the trial court found that Griffith's participation in the basketball game was purely personal and, therefore, that the traveling-employee doctrine did not bring Griffith's injury within the course of his employment. We disagree and find neither the fact that Griffith was on his free time nor that Griffith was engaged in recreational activity dispositive of whether he was in the course of his employment.

{¶22} First, the fact that a claimant has finished his daily work at the time he or she sustains an injury is not determinative of whether the claimant is eligible to participate in the workers' compensation fund. See *Elsass*; *Masden*. An employee

need not be injured in the actual performance of work duties to be in the course of his employment. *Ruckman* at 120. In fact, the Ohio Supreme Court has even found that injuries sustained by an employee during unpaid attendance at a company-sponsored picnic were compensable. See *Kohlmayer*.

{¶23} Of particular relevance are cases addressing an employee's course of employment while waiting to return to duty. In *Pascarella*, the Twelfth District addressed course of employment in relation to an airline pilot on an extended layover and noted that neither a required layover period nor recreational activities during the wait for resumption of actual duties constitutes a breach in a traveling employee's employment relationship. Id., citing *Roadway Express, Inc. v. Workmen's Comp. Appeal Bd.* (1987), 110 Pa.Commw. 619, 532 A.2d 1257, 1260. Similarly, in *Marbury*, the Second District considered whether a conference participant remained in the course of her employment for workers' compensation purposes during after-hours activities. That court recognized that reasonable minds might conclude that the claimant was within the course of her employment when she participated in a non-required, evening bus tour available to conference participants at an extra cost, even though it ultimately determined that the claimant's decision to leave the bus to buy a souvenir was a personal errand, outside the course of her employment. Griffith's situation is akin to that of the pilot-claimant in *Pascarella*. Griffith was required to reside away from home while waiting for the resumption of training classes, and the fact that his injury occurred during "free time" is not controlling.

{¶24} Ohio courts also have recognized that recreational activity is not, by its very nature, outside the course of an employee's employment. Notably, in *Kohlmayer* at

13, the Ohio Supreme Court found that a swimming injury at an employer-sponsored picnic was sustained in the course of employment because "[a] swimming injury is one which can reasonably be expected to occur at a company picnic at which swimming facilities are provided." See, also, *Columbia Gas of Ohio, Inc. v. Sommer* (1974), 44 Ohio App.2d 69 (employee's injury while playing on an employer-sponsored basketball team was sustained in the course of employment).

{¶25} Here, we conclude that Griffith was not engaged in a purely personal errand at the time of his injury, so as to sever the course of his employment and preclude participation in the workers' compensation fund. Griffith was at the academy with appellee's approval and was paid his normal wage during the training course. The purpose of Griffith's attendance was to enhance appellee's technical crash team, enhance Griffith's ability to perform his job duties, and enhance appellee's ability to investigate accidents independently from the highway patrol. Appellee strongly encouraged Griffith to remain at the academy throughout the training period, including his free time, in line with the highway patrol's own recommendation that trainees stay at the academy. The training course included room and board at the academy, and appellee would not pay for Griffith to stay or eat elsewhere.

{¶26} In addition, the academy provided attendees with the use of its physical fitness facilities, a fact well-known to appellee, and injury from the use of the provided facilities can reasonably be expected. See *McDonald v. State Hwy. Dept.* (1972), 127 Ga.App. 171, 176 ("[w]hen the employer paid for the employee's [hotel] accommodations and living expenses * * *, it did not just rent a bedroom for the employee, but the entire facilities – the lounge, swimming pool, lobby, etc. – and had

constructive knowledge that the employee would make use of the entire facilities on the premises"). Although training sessions had ended for the day, Griffith remained at the training academy, as encouraged by appellee, and engaged in physical activities consistent with his employment. Thus, applying the "in the course of" prong for workers' compensation coverage liberally in favor of Griffith, and looking at the time, place, and circumstances of Griffith's injury, we find that reasonable minds could only conclude that Griffith was injured in the course of his employment.

{¶27} We now turn to the question of whether Griffith's injury arose out of his employment, i.e., whether there is a causal connection between the injury and the employment. To answer that question, we consider the totality of the circumstances, including, but not limited to, the proximity of the scene of the accident to the place of employment, the degree of control the employer had over the scene of the accident, and the benefit the employer received from the employee's presence at the scene of the accident. *Lord* at 444; *Fisher* at 278-279. In contrast to the trial court, we find that the totality of the circumstances establishes the requisite causal connection between Griffith's injury and his employment.

{¶28} The trial court summarily concluded that Griffith is unable to satisfy the first *Lord* factor, regarding the proximity of the accident to the place of employment, because the academy is located approximately 80 miles from Miamisburg, Griffith's usual work location. We disagree with the trial court's analysis and find that the distance from Griffith's usual work location is not controlling where, at the time of the injury, Griffith was away from home for work-related purposes. In another scenario involving an employee away from his home base, the Third District analyzed the

proximity factor by apprising how far removed the scene of the injury was in time, space, and purpose from the truck-driver claimant's *last* place of employment, whether that be considered his delivery point or his motel. See *Elsass*. We find this approach preferable to that utilized by the trial court here.

{¶29} Griffith contends that he was injured on the premises of his employment and that the proximity factor, therefore, necessarily weighs in favor of coverage. In *Richardson*, this court considered a claim by a Dayton resident whose employer assigned him to a construction project in Columbus and paid for his motel accommodations during the week. We stated that, while in Columbus, the claimant was a fixed-situs employee, suggesting that the temporary construction site to which he was assigned was the claimant's place of employment for purposes of his workers' compensation claim. More directly, in *Faber v. R.J. Frazier Co.* (1991), 72 Ohio App.3d 9, the Eleventh District found that the claimant, who was assigned by his employer to work at a plant owned by Cleveland Electric Illuminating Company ("CEI") was on the employment premises when killed in an automobile accident on a private access road within CEI's property, even though his employer did not own, maintain or control that property. Accordingly, the court concluded that the claimant satisfied the proximity factor from *Lord*.

{¶30} Appellee does not dispute that, had Griffith been injured during the formal training programs at the academy, his injury would have arisen out of his employment. Moreover, in its appellate brief, appellee admits that, "[a]lthough the [academy] was not owned by Griffith's employer, [appellee], it would be considered 'on-premises' just as the CEI plant was considered on-premises in *Faber*." Thus, we find that, for purposes of

workers' compensation coverage, the academy was, at least, the location of Griffith's last employment. However, even were we to find that the academy did not constitute Griffith's employment premises for the duration of the training course, we do not find that the scene of Griffith's injury was too far removed in time, space, and purpose from his last employment to find a causal connection between the injury and the employment. Therefore, the first factor listed in *Lord* weighs in favor of coverage.

{¶31} The trial court also summarily found that Griffith was unable to satisfy the second *Lord* factor, regarding the employer's degree of control over the scene of the accident. While we agree that appellee had no direct control over the academy's facilities, we do not necessarily find that fact dispositive of the control factor. In *Masden*, the court found that the *Lord* factors supported a causal connection between the injury and employment despite the employer's lack of direct control over the employee's motel, the scene of the injury. The court noted that the employer selected and paid for the employee's motel, would not pay for alternative accommodations, and required the employee to remain in the vicinity of his assigned work site. Similarly, in *Faber*, although the employer did not control the private access road where its employee was killed, it did not provide another means for its employee to access the work site. That court stated that ownership and control are not paramount to injuries sustained on the employment premises. Id. at 15. Thus, direct control over the physical scene is not an ironclad prerequisite to satisfaction of the second *Lord* factor. Here, appellee did exercise some control over Griffith's presence at the academy by authorizing Griffith's attendance, encouraging Griffith to remain at the academy throughout the course, including his free time, and refusing to reimburse Griffith for his

costs were he to leave the facility for alternative meals, lodging or entertainment. Furthermore, even without these considerations, the absence of this one factor cannot be considered controlling to deny coverage. *Fisher* at 280.

{¶32} Finally, the trial court found that the third factor in *Lord*, the employer's benefit from the claimant's presence at the scene of the accident, weighed against a finding that Griffith's injury arose out of his employment. Clearly, appellee derived a benefit from Griffith's presence at the academy for training, and the trial court agreed. It is also clear to this court that appellee benefited from Griffith lodging at the academy and remaining there during his free time. However, the trial court found that appellee derived no benefit from Griffith playing basketball at the academy on his free time. To the contrary, Griffith maintains that appellee benefited not only from his presence at the academy, but also from his physical activity because he was required to maintain a certain level of physical fitness as a condition of his employment.[2]

{¶33} Griffith does not contend that, by virtue of appellee's physical fitness requirement, any injury he suffers while engaged in physical activity is compensable under the workers' compensation system. Indeed, we acknowledge that the Ninth District Court of Appeals recently held that a "remote causal connection that may be traced between an injury and the physical fitness requirements of an employer" was insufficient to demonstrate that the injury arose out of the claimant's employment. *Young v. State Hwy. Patrol Dept. of Admin. Servs.*, Summit App. No. 23688, 2007-Ohio-7021, ¶12. The *Young* claimant, who was injured while playing basketball at the local

[2] It is undisputed that, as a condition of employment, Miamisburg police officers are required to maintain a level of fitness that will permit them to effectively carry out their duties.

YMCA on his day off, was not required by his employment to be at the YMCA. The court recognized that the employer "did not require [the claimant] to participate in the basketball game by virtue of his employment," and stated that the employer's "general fitness requirements do not establish a causal connection between employment and every injury that may occur to a trooper in the course of physical activity." Id. We agree that an employer's general fitness requirement will not establish a causal connection between the employment and every injury sustained in physical activity, but we also find *Young* distinguishable from this case because the *Young* claimant was not a traveling employee at the time of his injury.

{¶34} Having Griffith stay at the academy benefited appellee by facilitating efficient training, aiding in Griffith's successful completion of the training, which in turn directly benefited appellee's technical crash team, and by saving appellee the costs of alternative room and board. Unlike the *Young* claimant, who was on his day off from work and had complete control over his free-time activities, Griffith was constrained by appellee's encouragement that he remain on the academy premises while away from home and was, therefore, limited to the activities and facilities available to trainees at the academy. Appellee knew that the academy provided physical training and workout facilities for attendees, and appellee could reasonably anticipate that Griffith would make use of those facilities, especially in light of appellee's physical fitness requirement. Further, injury from such activity could reasonably be anticipated. Appellee could not reasonably contemplate that Griffith, during the two-week training course, would neglect his personal needs or forfeit workers' compensation benefits from resultant injuries. Therefore, we find that the third and final *Lord* factor weighs in favor of coverage.

{¶35} Under the totality of the circumstances surrounding the unique facts of this case, and construing the statutory requirements liberally in favor of Griffith, we find that the evidence demonstrates the requisite causal connection between Griffith's injury and his employment.

{¶36} For the foregoing reasons, we sustain Griffith's assignments of error, reverse the judgment of the Franklin County Court of Common Pleas, and remand this matter to the trial court with instructions to enter judgment in favor of Griffith.

Judgment reversed and cause remanded with instructions.

TYACK and BROGAN, JJ., concur.

BROGAN, J., of the Second Appellate District, sitting by assignment in the Tenth Appellate District.

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Craig D. Griffith,	:	
Plaintiff-Appellant,	:	
v.	:	No. 08AP-557 (C.P.C. No. 07CVD11-15534)
City of Miamisburg et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on December 16, 2008, appellant's assignments of error are sustained, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and this cause is remanded to that court with instructions to enter judgment in favor of appellant. Costs shall be assessed against appellee City of Miamisburg.

FRENCH, TYACK, and BROGAN, JJ.

By Judith L. French
Judge Judith L. French

BROGAN, J., of the Second Appellate District, sitting by assignment in the Tenth Appellate District.