

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Russell Hanstein v. City of Ft. Lauderdale

569 So. 2d 493 (Fla. Dist. Ct. App. 1990) · No. No. 89-3380 · Decided October 8, 1990

SUMMARY

The Florida First District Court of Appeal held that a police officer injured while traveling from home to work was acting within the course of his employment. Because the officer’s primary responsibility included enforcement of traffic laws, the court concluded that Florida’s statutory requirements for workers’ compensation coverage were satisfied even though he had not yet issued a citation or taken affirmative action. The court reversed and remanded the workers’ compensation order denying benefits.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Per Curiam; Shivers, C.J.; Booth, J.; Zehmer, J.
JURISDICTION	Florida
DECIDED	October 8, 1990
DOCKET	No. 89-3380
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Claimant appealed a workers' compensation order denying benefits for an injury sustained while traveling from home to work.
STANDARD OF REVIEW	The court reviewed the workers' compensation order in light of undisputed facts and the statutory definition of acting within the course of employment.
PRECEDENTIAL VALUE	Published opinion; precedential value under Florida appellate precedent.
PARTIES	Russell Hanstein v. City of Ft. Lauderdale

TOPICS

- workers compensation
- statutory interpretation
- employment law
- municipal law

PRACTICE AREAS

- workers compensation
- employment law
- municipal law

QUESTIONS PRESENTED

1. Whether a police officer traveling from home to work was acting within the course of his employment under section 440.091, Florida Statutes, when he observed a traffic violation and intended to issue a citation before being injured.
2. Whether the officer had to actually issue a citation or take further affirmative action before his injury could be considered to have arisen out of and in the course of employment.

HOLDINGS

1. A patrol officer whose primary responsibility includes enforcement of traffic laws is acting within the course of employment while traveling to work on a public thoroughfare and discharging that law-enforcement responsibility.
2. An officer need not actually issue a citation or take additional affirmative action before an injury occurs to be acting within the course of employment under section 440.091.

KEY QUOTATIONS

“We find that the undisputed facts establish that claimant was within the course of his employment, and we therefore reverse the order appealed.” (569 So. 2d at 493)

“Claimant was discharging this primary responsibility while traveling to the police station, and it was not necessary to actually issue a citation or take any affirmative action in this regard for the officer to be within the course of his employment as delineated in section 440.091.” (569 So. 2d at 494)

FACTUAL BACKGROUND

Hanstein was a uniformed patrol officer traveling in his personal vehicle from home to the police station for his normal duty assignment. While traveling, he observed a tractor-trailer make an improper turn and consciously decided to issue a citation, but the truck struck his vehicle before he could do so. Departmental policy provided that an off-duty officer automatically became on duty upon observing a violation and taking affirmative action, and another officer later issued the citation at the accident scene.

PROCEDURAL HISTORY

The workers' compensation judge determined that Hanstein's injury did not occur within the course of his employment as a police officer and denied benefits. The First District Court of Appeal reversed and remanded, holding that the undisputed facts established that Hanstein was acting within the course of his employment.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The cause was remanded following reversal of the workers' compensation order denying benefits.

CASES CITED

- Warg v. City of Miami Springs, 249 So. 2d 3 (Fla. 1971)
- Sweat v. Allen, 200 So. 348 (Fla. 1941)
- City of Ft. Lauderdale v. Abrams, 561 So. 2d 1294 (Fla. 1st DCA 1990)

OPINION

PER CURIAM.

569 So. 2d 493 (1990) Russell HANSTEIN, Appellant, v. CITY OF FT. LAUDERDALE, Appellee. No. 89-3380. District Court of Appeal of Florida, First District. October 8, 1990. Rehearing Denied December 3, 1990. Anthony J. Aloneftis of Jo Ann Hoffman, P.A., Plantation, for appellant. Edward D. Schuster of Pyszka, Kessler, Massey, Weldon, Catri, Holton & Douberley, Fort Lauderdale, for appellee.

PER CURIAM. Claimant appeals a workers' compensation order by which a claim for benefits was denied upon a determination that an injury sustained while on the way to work did not occur within the course of claimant's employment as a police officer.

We find that the undisputed facts establish that claimant was within the course of his employment, and we therefore reverse the order appealed. Claimant is a police officer who serves as a patrolman, and at a hearing on this claim it was established that claimant's primary responsibility includes "enforcement of all the laws... including criminal laws and traffic laws."

The alleged injury occurred while claimant was traveling from his home to the police station to begin work on his normal duty assignment. Claimant observed a tractor-trailer rig making an improper turn, and testified that he made "a conscious decision" to issue a citation for this violation, but that before he could do so his vehicle was struck by the tractor-trailer rig.

Indicating that he has issued *494 other citations or made arrests while traveling to the police station to report for duty, claimant noted that he was driving his own private motor vehicle but was fully uniformed. Departmental policy provides that an off-duty officer will automatically be transferred to on-duty status upon observing a violation of law and taking "affirmative action."

Because departmental policy also precludes an officer from issuing a citation for an accident in which the officer is involved, claimant did not issue a citation to the driver of the tractor-trailer rig. However, another officer arrived on the scene and did issue a citation.

After the hearing was concluded the judge entered an order acknowledging that the case law has established police officers as a special category to whom the "going and coming" rule, which might otherwise exclude coverage for injuries sustained while traveling to and from work, does not fully apply. But the judge erroneously construed section 440.091, Florida Statutes, as precluding coverage in the present case.

In so ruling the judge noted that when the accident occurred claimant had not yet attempted to stop the driver of the tractor-trailer rig, and had not physically begun to issue a citation. The judge also found that claimant's intent to issue a citation did not place him in position to be involved in the accident.

The judge then incorrectly determined that claimant was not discharging his primary law enforcement responsibility at the time of the accident. Because police officers are generally charged with a duty of law enforcement while traveling on public thoroughfares, it has long been established that injuries which such officers sustain while traveling to and from work may be compensated under the Florida Workers' Compensation Law.

See *Warg v. City of Miami Springs*, 249 So. 2d 3 (Fla. 1971); *Sweat v. Allen*, 200 So. 348 (Fla. 1941). In 1982 the legislature adopted section 440.091, Florida Statutes, which specifies when law enforcement officers should be considered to be acting within the course of their employment.

The statute expressly requires that the officer be within the state and discharging a "primary responsibility" which includes "the prevention or detection of crime or the enforcement of the penal, criminal, traffic, or highway laws...."

In *City of Ft. Lauderdale v. Abrams*, 561 So. 2d 1294 (Fla. 1st DCA 1990), this court determined that a forensic detective who was involved in an automobile accident while traveling to work was not discharging her "primary responsibility" and was thus not entitled to compensation since under section 440.091 her injury did not occur within the course of the employment.

The detective in *Abrams* was traveling to work in her personal vehicle, and it was indicated that had she been called to make an investigation she would have proceeded to the police station to obtain a police van. While in the present case claimant was also in a personal vehicle, unlike the detective in *Abrams* claimant is a patrol officer whose primary responsibility is not limited to crime scene investigation, but rather includes the enforcement of traffic laws.

Claimant was discharging this primary responsibility while traveling to the police station, and it was not necessary to actually issue a citation or take any affirmative action in this regard for the officer to be within the course of his employment as delineated in section 440.091.

The ruling in *Abrams* does not apply to the circumstances of this case, and insofar as claimant was within the course of his employment the undisputed facts establish that the injury also arose out of the employment so as to be within the ambit of coverage under the Florida Workers' Compensation Law.

The order appealed is reversed and the cause remanded. SHIVERS, C.J., and BOOTH and ZEHMER, JJ., concur.

