IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

PAUL SIMKO,	)	CASE NO. 664661
Plaintiff,	)	JUDGE SHIRLEY STRICKLAND SAFFOLD
Vs.	)	
MBNA CORP., et al.,	)	
Defendants.	)	

Judgment and Opinion:

Facts

Plaintiff, Paul Simko, was hired by MBNA, Corp. in 1999 as a senior credit analyst. In his position, Plaintiff answered telephone calls and made credit decisions. Plaintiff worked at Defendant's Beachwood office, which consisted of office space the Defendant leased in a building owned by The Cleveland Clinic. The office building held other businesses that were not owned by, or affiliated with Defendant. Plaintiff's office was located on the first floor, across from a cafeteria.

On November 15, 2007, Plaintiff was to report to the second floor of the building to attend a training session. That morning Plaintiff arrived at his cubicle to pick up a pen, and then on his way to the second floor, stopped at the cafeteria to purchase a cup of coffee. Plaintiff obtained a coffee from a self-serve machine in the cafeteria. While walking away from the machine, Plaintiff slipped and fell. He reported the incident to the cafeteria, but declined medical treatment.

The Industrial Commission disallowed plaintiff's claim for worker's compensation. Plaintiff appealed their finding in July 2008 inv accordance with Ohio Revised Code Section 4123.512. Defendant filed a motion for summary judgment on February 27, 2009. A brief in opposition and a reply brief were filed and considered by this Court.

Analysis

In order for this Court to grant Defendants' motion for summary judgment, the Defendants must demonstrate that, "(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) it appears from such evidence that reasonable minds can come to one conclusion, and reviewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to the party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St. 2d 317, 327.

In order for the injury to be compensable under Ohio Revised Code Section 4123.01, the injury must be "received in the course of, and arising out of, the injured employee's employment." *Brailey v. Daughterty*, (1980) 61 Ohio St. 2d, 302; Ohio Revised Code Section Ann. 4123.01. An injury falls into the "course of employment" when the injury occurs while the employee is performing his duties, or is performing an act logically related to his employment. *Ruckman v. Cubby Drilling, Inc*. (1998) 81 Ohio St. 3d 117, 120. Courts must look to the time, place, and circumstances of the injury. See *Luo v. Gao*, 2007 Ohio 959.

Here, Plaintiff did not fall while performing his official duties as a senior credit analyst. Rather, he fell while on a short detour to purchase a cup of coffee. Plaintiff

stopped at his desk at his 10 a.m. starting time to obtain a pen he needed to take to his training class. The cafeteria where Plaintiff purchased the coffee was directly across the hall from the Defendant's first floor office and was on his way to the second floor. Reviewing all the relevant circumstances, this Court finds that Plaintiff had demonstrated his injury occurred in the course of his employment. Plaintiff had already began his shift and simply made a short detour on his way to a training session.

Although, Plaintiff had met the first element, Plaintiff must also demonstrate that the injury arose out of his employment.. *Luo* at 11. The test, "is conjunctive; both prongs of the formula must be satisfied before compensation will be allowed." *Id.* at 9. Courts have applied a three-part totality of the circumstances test to determine whether the employee has met his burden regarding the "arising out of employment" prong. *Lord v. Daugherty* (1981), 66 Ohio St.2d 441. The court is to consider: (1) proximity of the accident sit to the place of employment; (2) employer's degree of control over the accident site; and (3) benefit the employer received from employee's presence at the accident site. *Id*.

The cafeteria was located on the first floor, across the hall from the office where Plaintiff worked. Although the cafeteria had a separate entrance, it was in extremely close proximity to Plaintiff's workstation. Defendant argued that although the cafeteria was normally in close proximity to Plaintiff's workstation, on the day of the accident Plaintiff was to report directly to the second floor. Therefore, the cafeteria should not have been on his way to work on the day of the accident. This Court finds that it was not unreasonable for Plaintiff to first stop at his first floor desk before attending his class.

Plaintiff has demonstrated that the first element of the totality of the circumstance test has been met.

Next, Plaintiff must demonstrate that the employer had some degree of control over the accident site. *Id*. The Defendant did not own the cafeteria. Defendant simply leased office space within the building. Plaintiff has provided no evidence that Defendant had control over the cafeteria or its maintenance. Plaintiff argues that the cafeteria was within the zone of Plaintiff's employment, and therefore, should be covered by worker's compensation.

Courts have defined the zone of employment as, "the place of employment and the area thereabout, including the means of ingress thereto and egress therefrom, under control of the employer." *Merz v. Indus. Comm*. (1938), 134 Ohio St. 36, 39*; Fitch v. Ameritech Corp*., 2007 Ohio 2725 at 17. Plaintiff relies on *Fitch v. Ameritech Corp*. to support his position that he was in the zone of employment when he slipped in the cafeteria. In *Fitch*, the employer rented office space in a large building. The employee was a smoker, and took smoke breaks outside the building. One day when the employee was entering the building after a smoke break, a steel support beam from the door fell and caused injuries to the employee's head and back. The Court allowed the employee's claim in *Fitch*; however, *Fitch* is clearly distinguishable from the instant action.

In *Fitch*, as in the present case, the employer simply rented space in an office building and had no maintenance duties. The employee in *Fitch* was on a smoke break that was approved by his employer. Further, the employee was injured coming through the door. The Court in *Fitch* stated, "it is not required that the employer have actual control over the area of injury if there is limited access to the place of employment."

Fitch at 23. The employee had no other means to gain entry to his office other than to pass through the doors that injured him. In the instant case, Plaintiff did not have to pass through the cafeteria. He took a deliberate detour to purchase coffee. The cafeteria was not a common area of the building, but was managed by a private company that had no affiliation with Defendant.

Plaintiff also relies on *Dolby v. General Motors Corporation*. *Dolby v. General Motors Corporation* (1989), 62 Ohio App. 3d 68. In *Dolby*, the employee was on a paid break on his employer's property when he tripped and fell on a stairway. The trial court granted summary judgment in favor of the defendant who argued that injuries while on break were not compensable. The court of appeals reversed holding that breaks were within the scope of employment and eligible to be compensation. There are two keys differences between *Dolby* and this action. In *Dolby*, the employee did not leave the employer's property. The employee was on property owned by the employer at the time he sustained his injuries. In this case, Plaintiff was on property owned by another company at the time of his fall. Further, the employee in *Dolby* was on an approved break. Here, Plaintiff had just arrived to work and was supposed to be reporting to the training course, not obtaining coffee on the first floor. Plaintiff's actions were not sanctioned by his employer.

In a similar case, *Jackson v. University Hospital of Cleveland*, the employee was injured directly after her shift when she stopped into the cafeteria to get a cup of coffee. *Jackson v. University Hospital of Cleveland*, (1997), 122 Ohio App. 3d 371. The injury in *Jackson* occurred directly after the employee's shift and in this case Plaintiff's injury here occurred immediately prior to his shift. In *Jackson*, the employer even owned and

controlled the cafeteria where the injury occurred. The trial court granted summary judgment inn favor of the defendant. The Eighth District Court of Appeals affirmed, holding that purchasing the cup of coffee was a purely personal decision that was not incidental to any of her assigned duties. *Id.* at 374.

Judgment

Finding that Plaintiff has failed to meet his burden of establishing his injury arose from his employment, Defendant's motion for summary judgment is hereby granted.

IT IS SO ORDERED

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Judge Shirley Strickland Saffold Date