

# A Hot Dog Detour and a Workers' Compensation Claim: When a Lunch Stop is Not in the Course of Employment

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September 1, 2021 | by Thomas F. Dorn, Jr

Under the New Jersey Workers' Compensation Act, an employee is entitled to compensation for an accidental injury if the employee's injury arose out of and in the course of employment. In a recent unpublished opinion, Mackoff v. New Brunswick Saw Service, A-3625-19, a salesman was injured in a motor vehicle accident on his way to get a hot dog for lunch and brought a claim for workers' compensation benefits. The question at hand was whether his drive to the lunch spot was "in the course of employment" or if his workday had ended at that point.

## The Timing of the Motor Vehicle Accident and the Purpose of the Drive

Andrew Mackoff worked as a salesperson and account manager for New Brunswick Saw Service (NBSS) in Middlesex, New Jersey. NBSS sells and services food processing and meat room equipment. Although Mackoff worked most days from his home in Blackwood, New Jersey, he occasionally drove to meet with clients and prospective clients in various neighboring towns and states to make service calls.

On December 3, 2018, Mackoff drove from his home to meet with a client in West Caldwell, New Jersey. After his meeting, he decided to get lunch at one of his favorite hot dog places, the Galloping Hill Inn a/k/a Five Points in Union, New Jersey. (One of this writer's and his family's favorite hot dog places too and listed by the *Star Ledger* as one of the top 25 best hot dog places in New Jersey.) After lunch, he intended to stop by his office in Middlesex.

As Mackoff was driving to the Galloping Hill Inn, his vehicle was struck by another motor vehicle.

## Claim Filed in Workers' Compensation Court is Denied and Appealed

Alleging orthopedic injuries, Mackoff filed a workers' compensation claim petition in the Camden Workers' Compensation court. His employer NBSS filed an Answer admitting that he was an employee but denying that his injuries were work-related.

Mackoff then filed a motion for medical and temporary disability benefits. At a hearing, he testified that Galloping Hill Inn was not a customer and that it was located about an hour away from his client's location in West Caldwell.

The judge denied Mackoff's motion, stating that he did not intend to conduct any business at the Galloping Hill Inn hot dog restaurant, and that his primary purpose for driving to the hot dog place was personal and not work-related. The judge determined that Mackoff had completed his workday and was on his way to lunch when his car was struck.

Mackoff appealed the denial of his motion to the Appellate Division, arguing that his workday was not completed and that his travel toward the Galloping Hill Inn was a minor deviation in his work schedule.

### The Minor Deviation Argument in *Jumpp v. City of Venter*

The New Jersey Supreme Court in Jumpp v. City of Venter, 177 N.J. 470 (2003) addressed compensability of injuries sustained when an employee deviates from his work schedule.

The court in Jumpp held that, in general, when an employee is working at a location away from the employer's principal place of business, the issue of whether an employee is eligible for workers' compensation benefits should be based on a finding that the employee was performing his or her job duties at the time of the injury. An exception has been carved out in the law for employees who are injured during a minor deviation from their job duties.

### The Personal Comfort Doctrine in *Cooper v. Barnickel Enterprises*

Interestingly, in Cooper v. Barnickel Enterprises, 411 N.J. Super. 343 (App. Div. 2010), a petitioner who was injured driving to get a coffee was awarded workers' compensation benefits.

The Cooper decision upholds the personal comfort doctrine which states that employees who are injured tending to personal needs for comfort or sustenance, including worktime breaks for eating, drinking, using the bathroom, smoking or otherwise seeking relief from discomfort are entitled to workers' compensation benefits.

In Cooper, petitioner was a foreman who went to a union hall to discuss plans for a new job with a union instructor. However, when he got to the union hall, the instructor he was going to meet with was still teaching a class. Because there was no coffee in the union hall, petitioner decided to drive five miles away to a deli for coffee. Petitioner was involved in a car accident on the way to the deli. The court in Cooper found in favor of petitioner because petitioner's workday was not completed and his decision to drive for a coffee was not a personal errand - - it was for his personal comfort. The workers' compensation judge held that petitioner was not expected to stand like a statue or remain at the union hall with nothing to do.

## **Workers' Compensation Claims are Fact-Specific and Mackoff's Claims were Denied**

The Appellate Division agreed with the workers' compensation judge that Mackoff was not performing his job duties at the time of his motor vehicle accident. His decision to drive to the hot dog place was not job related; it was personal.

The court also rejected the minor deviation argument because the Galloping Hill Inn was an hour out of the way, and it was more of a personal errand.

The determination of what is compensable and what is not comes down to the facts of each case. Mackoff's argument that his injury on the way to grab a hot dog for lunch was compensable did not, shall we say, quite cut the mustard.