State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: January 5, 2012 512634

AFFIRMED Board's ruling that injury occurred while on a limited dinner break.

In the Matter of the Claim of
RICHARD POTTER JR.,
Respondent,
v

VM PAOLOZZI IMPORTS, INC., et al., d/b/a Dealmaker Honda
Appellants.

WORKERS' COMPENSATION BOARD,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: November 22, 2011

Before: Mercure, Acting P.J., Peters, Rose, Lahtinen and Garry, JJ.

Gregory J. Allen, New York State Insurance Fund, Liverpool (Susan B. Marris of counsel), for appellants.

McMahon, Kublick & Smith, P.C., Syracuse (Timothy J. McMahon of counsel), for Richard Potter Jr., respondent.

Eric T. Schneiderman, Attorney General, New York City (Iris A. Steel of counsel), for Workers' Compensation Board, respondent.

Peters, J.

Appeal from a decision of the Workers' Compensation Board, filed October 14, 2010, which ruled that claimant's injury arose out of and in the course of his employment and awarded claimant workers' compensation benefits.

Claimant was employed as an automobile salesperson when he was injured in an accident while driving his personal car while on an authorized break. During his scheduled shift, claimant had requested and received permission from his supervisor to briefly leave work to go to pick up two spaghetti dinners for the employer's finance manager and bring them back to the dealership. The finance manager had purchased the dinners as part of a fundraiser sponsored by a football team that claimant helped run on a voluntary basis. A Workers' Compensation Law Judge found that claimant's injuries arose out of and in the course of his employment and awarded benefits. The Workers' Compensation Board affirmed, and the employer and its workers' compensation carrier appeal.

We affirm. "Accidents that occur during an employee's short breaks, such as coffee breaks, are considered to be so closely related to the performance of the job that they do not constitute an interruption of employment" (Matter of Pabon v New York City Tr. Auth., 24 AD3d 833, 833 [2005] [citations omitted]; accord Matter of Kontogiannis v Nationwide PC, 51 AD3d 1180, 1181 [2008]). Benefits are awarded "on the theory of constructive control of the employee by the employer during the off-premises activity" (Matter of Balsam v New York State Div. of Empl., 24 AD2d 802, 803 [1965]; accord Matter of Kouvatsos v Line Masters, 281 AD2d 769, 770 [2001]). Here, claimant's supervisor testified that it was customary to allow salespeople to leave the dealership on short paid breaks. Claimant requested permission to pick up the dinners for the finance manager, which required a very short drive from the dealership. Claimant had only been gone approximately 15 minutes, and was already on his way back to the dealership, when the accident occurred. We find that substantial evidence supports the Board's determination that claimant's short break did not constitute an interruption of employment (see Matter of Kontogiannis v Nationwide PC, 51 AD3d at 1181-1182; Matter of Pabon v New York City Tr. Auth., 24 AD3d at 833; Matter of Caporale v State Dept. of Taxation & Fin., 2 AD2d 91, 92 [1956], affd 2 NY2d 946 [1957]) and, therefore, the Board's determination will not be disturbed.

Mercure, Acting P.J., Rose, Lahtinen and Garry, JJ., concur.

ORDERED that the decision is affirmed, with costs to claimant.

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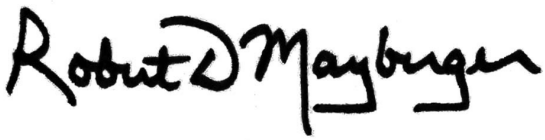

Robert D. Mayberger
Clerk of the Court