Alaska Workers' Compensation Appeals Commission

Black Gold Express, Inc. and Insurance Company of the State of Pennsylvania, Appellants, vs. Glinda Garwood (Widow and Personal Representative for the Estate of Mark Garwood), Appellee.	Final Decision Decision No. 223 February 19, 2016 AWCAC Appeal No. 15-012 AWCB Decision No. 15-0032 AWCB Case No. 201415369

Final decision on appeal from Alaska Workers' Compensation Board Final Decision and Order No. 15-0032, issued at Fairbanks, Alaska, on March 17, 2015, by northern panel members Amanda K. Eklund, Chair, Lake Williams, Member for Labor, and Ron Nalikak, Member for Industry.

Appearances: Colby J. Smith, Griffin & Smith, for appellants, Black Gold Express, Inc. and Insurance Company of the State of Pennsylvania; J. John Franich, Franich Law Office, LLC, for appellee, Glinda Garwood (Widow and Personal Representative for the Estate of Mark Garwood).

Commission proceedings: Appeal filed April 13, 2015; briefing completed October 12, 2015; oral argument held on November 3, 2015.

Commissioners: Michael J. Notar, S. T. Hagedorn, Andrew M. Hemenway, Chair.

By: Andrew M. Hemenway, Chair.

1. Introduction.

Mark Garwood perished in an automobile accident as he was driving from a remote work site to Fairbanks in an employer-provided vehicle. His estate filed a claim for workers' compensation benefits. The board concluded that his death arose in the course of his employment and awarded benefits. His employer appeals. We affirm the board's decision because the vehicle was supplied by the employer.

2. Factual background and proceedings.

Mark Garwood was employed as a truck driver by Black Gold Express, Inc. (Black Gold).[1] Mr. Garwood's residence was in Fairbanks. He worked out of a camp on the Dalton Highway at Galbraith Lake on the North Slope, approximately 350 miles north of Fairbanks.[2] At the beginning and end of the work season, Black Gold provided transportation for workers between the Galbraith camp and Hilltop Truck Stop (Hilltop), on the Elliot Highway about 15 miles north of Fairbanks.[3]

Glinda Garwood, Mr. Garwood's wife, dropped her husband off at Hilltop on June 14, 2014.[4] Mr. Garwood drove in a company truck from there to Galbraith, where Mr. Garwood stayed until the end of August except for an overnight visit to Fairbanks around August 9, 2014.[5]

On August 30, 2014, Mr. Garwood called his wife and told her he would be coming home the next day for one night.[6] Black Gold kept a company-owned pickup truck on site for employees' personal use.[7] Black Gold authorized Mr. Garwood to take a day off from work in order to go to Fairbanks for personal reasons, and authorized

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[1] *See* R. 50.

[2] *See Estate of Mark Garwood v. Black Gold Express and Insurance Company of the State of Pennsylvania*, Alaska Workers' Comp. Bd. Dec. No. 15-0032 at 6 (No. 15), 25 (Mar. 17, 2015) (hereinafter, *Garwood*); R. 50; Hr'g Tr. at 62:22-25, Feb. 5, 2015. The "haul road" referred to in the board's decision is the Dalton Highway.

[3] *See Garwood*, Bd. Dec. No. 15-0032 at 8 (No. 19) ("Whatever method was used, however, Galloway made clear it was the company's responsibility to transport its employees home to Fairbanks."); R. 50-51. Mr. Galloway clarified that he was referring to the employer's obligation to get workers home "[a]t the end of the job." Hr'g Tr. at 48:3-17.

[4] *See Garwood*, Bd. Dec. No. 15-0032 at 6 (No.15); Hr'g Tr. at 25:1-7.

[5] *See Garwood*, Bd. Dec. No. 15-0032 at 6 (No. 15); R. 51; Hr'g Tr. at 25:21–26:22, 46:22–47:3.

[6] *See Garwood*, Bd. Dec. No. 15-0032 at 7 (No. 15).

[7] *See id.* at 8 (No. 20).

him to use the company pickup truck for the trip.[8] Mr. Garwood left the work camp in the company pickup truck after his shift ended on August 31, 2014.[9] Later that evening, the pickup truck Mr. Garwood was driving overturned at Mile 145 on the Dalton Highway, and Mr. Garwood was killed.[10]

3. Standard of review.

Black Gold raises a single issue on appeal: whether the board erred in finding that the vehicle accident occurred in the course of Mr. Garwood's employment. We must uphold the board's factual findings relevant to the course of employment if they are supported by substantial evidence in light of the whole record.[11] In this case, Black Gold has not asserted that any of the facts as found by the board lack substantial support in the evidence. On any given set of facts, determining whether an injury arose in the course of employment is a question of law.[12] On questions of law, we do not defer to the board's conclusions. We exercise our independent judgment.[13]

4. Discussion.

There is no dispute, for purposes of this appeal, as to these facts: at the time of the accident Mr. Garwood was off duty, driving from his place of employment at a

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[8] *See Garwood*, Bd. Dec. No. 15-0032 at 4 (No. 7), 5-6 (No. 9), 7-8 (No. 18).

[9] *Id.*

[10] *See Garwood*, Bd. Dec. No. 15-0032 at 3 (No. 1); Exc. 1.

[11] AS 23.30.128(b).

[12] *See*, *e.g.*, *Seville v. Holland America Line Westours, Inc.*, 977 P.2d 103, 105 (Alaska 1999); *Sokolowski v. Best Western Golden Lion Hotel*, 813 P.2d 286, 289, n. 1 (Alaska 1991) (hereinafter, *Sokolowski*); *Kodiak Oilfield Haulers v. Adams*, 777 P.2d 1145, 1148 (Alaska 1989); *M-K Rivers v. Schleifman*, 599 P.2d 132, 134 (Alaska 1979) (hereinafter, *M-K Rivers*).

[13] AS 23.30.128(b).

remote site[14] to his home for solely personal reasons;[15] the accident occurred on the Dalton Highway at a location between the remote site work camp and the point to which the employee was responsible for transportation at the start and end of the job; the pickup truck Mr. Garwood was driving was provided by Black Gold for its employees' personal use; and Black Gold authorized Mr. Garwood to use its pickup truck to drive to Fairbanks to engage in personal activities there. Given these facts, Black Gold argues, as a matter of law the accident did not arise within the course of employment.

Black Gold begins by pointing out that, in general, under the going and coming rule, injuries incurred off the employer's premises while travelling to and from work are not compensable.[16] One of the exceptions to the coming and going rule is the special

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[14] Whether a particular location is a remote site for purposes of the remote site doctrine is, on any given set of facts, a legal question. In this case the parties do not dispute that Mr. Garwood was working at a remote site. *See generally Marsh Creek, LLC v. Benston*, Alaska Workers' Comp. App. Comm'n Dec. No. 101 at 11-12 (Mar. 13, 2009) (hereinafter, *Marsh Creek*).

[15] Ms. Garwood testified that Mr. Garwood had told her that he would be driving into Fairbanks at the request of Black Gold, as a parts run. *Garwood*, Bd. Dec. No. 15-0032 at 7 (No. 15); Hr'g Tr. at 26:7–27:6. The board found that she "credibly testified at hearing, consistent with her deposition, about . . . her understanding of his purpose for driving to Fairbanks on August 31, 2014." *Garwood*, Bd. Dec. No. 15-0032 at 6 (No. 15), 23. However, it added, "The panel rejects Claimant's contention Employee was making a parts run for Employer; the facts simply do not support it." *Id.*, at 24. We conclude that while the board found Ms. Garwood credible, it nonetheless found that Mr. Garwood did not make a parts run: he may have told his wife that was the reason for his trip, but that was not actually the reason.

[16] Appellants' Brief at 7. *See Sokolowski*, 813 P.2d 286, 289 ("Under the 'going and coming rule,' travel between home and work is considered a personal activity, and injuries occurring off the work premises during such travel are generally not compensable. . . ."); *R.C.A. Service Company v. Liggett*, 394 P.2d 675, 677-678 ("[I]t is well settled in most jurisdictions that injuries occurring off the employer's premises while the employee is going to or coming from work do not arise in the course of his employment.") (hereinafter, *R.C.A. Service*).

errand exception,[17] which applies, in Black Gold's characterization, when the employee's travel provides some benefit to the employer.[18] Since the board found that Mr. Garwood's trip was purely personal in purpose and effect, Back Gold argues, his trip does not fall within the special errand exception.[19]

The board erred, Black Gold argues, by relying on *M-K Rivers*, in which the court found travel away from a remote work site within the course of employment because the trip, while personal in nature (to cash a paycheck), was incident to employment.[20] Black Gold says that the majority opinion in *M-K Rivers* mistakenly analyzed the case as if the injury had occurred at a remote work site, rather than during travel,[21] and in so doing departed from the precedent established in *R.C.A. Service*.[22] *State, Department of Transportation v. Johns* (hereinafter, *Johns*), a case in which the court applied the special errand exception, is distinguishable, Black Gold argues, because in that case the

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[17] At least one other exception to the going and coming rule, the special hazards exception, has been adopted in Alaska. *See Sokolowski*, 813 P.2d at 290. The court has noted, without adopting, the existence of a "so-called 'coffee break exception' to the going and coming rule." *See M-K Rivers*, 599 P.2d at 137 (Matthews, J., dissenting); 1 A. Larson & L. Larson, *Larson's Workers' Compensation Law*, §13.05[4] (2008 ed.) (hereinafter, Larson).

[18] Appellants' Brief at 7 ("[U]nder the 'special errand' exception. . . , if the employee is injured traveling to or from work while also providing some benefit to the employer, the injury . . . is compensable.") (emphasis added).

[19] *See* Appellants' Brief at 7-8.

[20] Appellants' Brief at 11-12, citing *M-K Rivers*, 599 P.2d at 135-136.

[21] Appellants' Brief at 12 ("the majority analyzed and decided the case as though Schleifman was injured while **at** a remote jobsite.") (emphasis in original; footnote omitted).

[22] *See* Appellants' Brief at 13 ("the [*M-K Rivers*] majority ignored established precedent, the [*R.C.A. Service*] decision.").

employee was compensated for his travel.[23] Also distinguishable, Black Gold asserts, are cases involving not travel to and from the worksite, but an injury at a remote site workplace.[24] The only feature of Mr. Garwood's trip that bears any connection to his employment is that it was undertaken in Black Gold's vehicle, Black Gold argues, and to impose liability based on that fact alone would "stretch the concept of work-connectedness beyond its intended limits[.]"[25]

Black Gold focuses on pre-1982 Alaska cases discussing the special errand exception and the remote site doctrine, suggesting that the board's decision should be reversed because Mr. Garwood's travel home on a day off would not qualify for the special errand exception or be considered within the course of employment under the

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[23] *See* Appellants' Brief at 13, citing *Johns*, 422 P.2d 855 (Alaska 1967) ("*Johns* is . . . distinguishable because, unlike here, the evidence indicated that Johns was compensated for his travel."). In that case, the court found that Johns' injuries were incurred within the course and scope of employment on what it characterized as two separate grounds: first, under the special errand exception to the going and coming rule because "the trouble, time, and special inconvenience" of the trip "was an integral part of his employment and came within the special errand exception"; and, second, under "another exception" to the going and coming rule because the employee was compensated for the travel. *Id.*, 422 P.2d at 859-860.

[24] Appellants' Brief at 8, n. 21, citing *Excursion Inlet Packing Co. v. Ugale*, 92 P.3d 413 (Alaska 2004) ("*Ugale* is distinguishable on its facts . . . . [T]he employee quit, had not yet started his trip home, and was still at the remote worksite when he died."); 12, citing *Anderson v. Employers Liability Assurance Corp.*, 498 P.2d 288 (Alaska 1972) (employee engaged in recreational activity on the employer's premises at remote site work camp) (hereinafter, *Anderson*). *See also id.* at 16, citing *Milos v. Quality Asphalt Paving, Inc.*, 145 P.3d 533 (Alaska 2006) (hereinafter, *Milos*). In *Milos*, an employee was electrocuted on work premises while using an employer-owned ATV. That case is distinguishable from this one on multiple grounds: the employee was not traveling to or from work; the work site was a gravel pit near Willow, not described in the decision as a remote work site (although Black Gold characterizes it as such); and the employee's use of the ATV was unauthorized.

[25] Appellants' Brief at 17.

remote site doctrine.[26] But Ms. Garwood does not rely on either the special errand exception or the remote site doctrine, or prior case law, to establish her right to compensation. She relies, rather, on AS 23.30.395(2), which directly governs travel to and from a remote site work site and as enacted in 1982 provided:

> "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities.[27]

The initial clause in AS 23.30.395(2) in effect created an express statutory exception to the going and coming rule for "employer-required or supplied travel to and from a remote work site[.]" Ms. Garwood argues that this clause governs her case. Black Gold, however, argues that the clause is limited to travel with a business purpose of some kind, based on the subsequent exclusion in AS 23.30.395(2) of "activities of a personal nature away from employer-provided facilities."[28] Black Gold argues that we should adopt its interpretation of AS 23.30.395(2) because, according to Black Gold, its interpretation is consistent with the special errand exception[29] and with the remote site doctrine (notwithstanding *M-K Rivers*, which Black Gold contends was wrongly decided).[30]

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[26] *See generally*, Appellants' Brief at 8-11, *R.C.A Service* (1964) (special errand exception); 11-16, *Northern Corporation v. Saari*, 409 P.2d 845 (Alaska 1966) (remote site doctrine) (hereinafter, *Northern Corporation*), *Johns* (1967) (special errand exception), *Anderson* (1972) (remote site doctrine), *M-K Rivers* (1979) (remote site doctrine).

[27] Ch. 93 §24 SLA 1982. An amendment in 1994 added an exclusion for "recreational league activities sponsored by the employer, unless participation is required as a condition of employment[.]" Ch. 72 § 2 SLA 1994. The exclusion added in 1994 is immaterial for purposes of this case.

[28] AS 23.30.395(2). *See* Appellants' Reply Brief at 8.

[29] *See* Appellants' Brief at 11-17.

[30] *See* Appellants' Brief at 11-16. Black Gold characterizes the decision as "a result-oriented aberration" and suggests that we should look to the dissent as our guide. *Id.*, at 14.

We begin our analysis by observing that Black Gold's argument conflates two separate judicially-created legal doctrines: the special errand exception to the going and coming rule, which applies to travel to and from the employer's premises,[31] and the remote site doctrine, which in general applies to activities of a personal nature at a remote work site,[32] but has also been applied to travel between the remote work site and other locations.[33] Black Gold's assertion that in *M-K Rivers*, in which the court applied the remote site doctrine, the court disregarded the precedent it had established in *R.C.A. Service* is mistaken: in *R.C.A. Service* the employee was working at a remote site, but the court analyzed the case under the special errand exception rather than

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[31] 1 Larson §14.05[1] ("The special errand rule may be stated as follows: When an employee, having identifiable time and space limits on the employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it under the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the journey itself."). *See, e.g., Johns*, 422 P.2d 855, 860 (Alaska 1967); *Johnson v. Fairbanks Clinic*, 647 P.2d 592, 595 (Alaska 1982). The court has cautioned that "the special errand rule will usually not be applicable in the absence of reimbursement, an express agreement, or some other clear indication that travel is an integral part of the employment relationship." *M-K Rivers*, 599 P.2d at 135 (emphasis added).

[32] *See Anderson*, 498 P.2d 288, 290 (Alaska 1972) ("When an employee is required by the conditions of his employment to reside on the employer's premises where he is constantly on call, his activities which occur on the premises are normally considered to be 'work connected.'"); *Norcon, Inc. v. Alaska Workers' Compensation Board*, 880 P.2d 1051, 1053 n. 2 ("The principle behind the 'remote site' theory is that because a worker at a remote site is required, as a condition of employment, to eat, sleep and socialize on the work premises, activities normally divorced from his work become part of the working conditions to which the worker is subjected."); *Marsh Creek*, App. Comm'n Dec. No. 101 at 13, n. 27 ("The object of the remote site doctrine is to extend the 'course of employment' to cover other activities than the work duties while in camp.").

[33] *See*, *e.g.*, *Northern Corporation*, 409 P.2d 845 (1966) (travel between work camp and an Air Force non-commissioned officers' club 700 yards away); *M-K Rivers*, 599 P.2d at 135 (travel between work camp and a town 30 miles away).

under the remote site doctrine.[34] The court first applied the remote site doctrine in *Northern Corporation*, a case decided two years after *R.C.A. Service*.[35] In *Northern Corporation*, the court specifically distinguished *R.C.A. Service* on the ground that *R.C.A. Service* involved travel between the employee's home and the remote site.[36] *R.C.A. Service* is precedent for the proposition that travel between an employee's home and a remote site is governed by the special errand exception, rather than by the remote site doctrine;[37] *Northern Corporation* and *M-K Rivers* are precedent for the proposition that travel between locations other than an employee's home and a remote site is governed by the remote site doctrine.

Because *M-K Rivers* did not involve travel between an employee's home and the remote work site, it is not correct to say that in *M-K Rivers* the court departed from the precedent it established in *R.C.A. Service*. However, it is correct to say that the board, in this case, failed to distinguish travel between a remote site and an employee's home, as was at issue in *R.C.A. Service*, from travel between a remote site and other locations, as was at issue in *M-K Rivers*. But, that the board did not make that distinction does not matter: AS 23.30.395(2) does not make that distinction, either. By its terms, AS 23.30.395(2) applies both to travel between a remote site and an employee's home and to travel between a remote site and other locations, so long as the travel is "employer-required or supplied." Under AS 23.30.395(2), that the employer either requires or supplies travel to or from the remote site brings the travel

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[34] *Id.*, 364 P.2d at 677 ("The question presented is whether . . . the work performed or any of the activities engaged in by [the employee] brought his case within the special errand exception to the going and coming rule[.]").

[35] *Northern Corporation*, 409 P.2d 845 (Alaska 1966).

[36] *Id.*, 409 P.2d at 846-847 ("We do not have a case, as we did in [*R.C.A. Service*], of an employee being injured while he was traveling from his home to his place of employment[.]").

[37] *See also*, *Johns*, 422 P.2d 855 (Alaska 1972). In that case, the employee commuted to a remote work site, because there was no space available at the work camp. He was injured in an automobile accident while traveling between his home and the remote work site. The court analyzed the case under the special errand exception, rather than under the remote site doctrine.

within the course of employment, without regard to the special errand exception and without resort to the remote site doctrine.[38]

Black Gold's argument to the contrary is premised on its view that the special errand exception is limited to travel that benefits the employer, and that AS 23.30.395(2) should be interpreted in the same way.[39] But this argument disregards that under AS 23.30.395(2), the course of employment is specifically defined to include travel to and from a remote site that is "employer-required or supplied." When travel to or from the employer's premises is required or supplied by the employer, the special errand exception is not the only basis upon which the travel may be found within the

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[38] Because the accident in this case occurred on the Haul Road between the remote site work camp and Hilltop, we need not consider whether travel beyond Hilltop, or in Fairbanks, would have been "to and from a remote job site" within the meaning of AS 23.30.395(2). *Cf. Snyder v. Alaska United Drilling, Inc.*, Alaska Workers' Comp. Bd. Dec. No. 89-0103 (May 4, 1989) (employee injured while "in an area of restricted access, dedicated to entry and departure from aircraft" prior to boarding employer-provided flight to remote site). Similarly, we do not need to consider whether travel between the remote work camp and locations other than Hilltop in a vehicle not provided or supplied by the employer may be within the course of employment, as in *M-K Rivers* and *Anderson*, notwithstanding the enactment of AS 23.30.395(2). *See Excursion Inlet Packing Company v. Ugale*, 92 P.3d 413, 419 (Alaska 2004) (AS 23.30.395(2) "affirm[s] the court decisions on travel to and from a remote site[.]"); Sectional Analysis (bill excludes "travel to a banking facility when [unlike *M-K Rivers*] check cashing facilities are available the remote site"). *See infra*, n. 46.

[39] *See supra*, n. 18. The court has stated that, in general, job-relatedness for purposes of liability for workers' compensation "is usually a function of benefit to the employer[.]" *Luth v. Rogers & Babler Construction Co.*, 507 P.2d 761 (Alaska 1973) (emphasis added). However, in *Sokolowski*, the court cautioned against "using 'employer benefit' as the criterion for determining the scope of the [Workers Compensation] Act." 813 P.2d at 291, n. 4.

course of employment.[40] Similarly, in the remote site context, that travel is undertaken for personal reasons and is of no benefit to the employer does not preclude treating that travel as within the course of employment.[41] We conclude that neither the special errand exception nor the remote site doctrine supports reading AS 23.30.395(2) in the manner proposed by Black Gold. Accordingly, the pertinent issue in this case is not whether there was a business purpose to Mr. Garwood's travel. Rather, it is whether Mr. Garwood's travel was "employer-required or supplied" within the meaning of AS 23.30.395(2).

Turning first to whether the travel was "required" by the employer, within the meaning of AS 23.30.395(2), we are of the view that travel between an employee's home and a remote site at the beginning and end of a job or work season is "required" within the meaning of AS 23.30.395(2) when residence at the remote work site is a

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[40] Travel required by the employer for the purpose of performing a particular task is not subject to the special errand exception at all; such travel is, rather, "plainly within the course of employment in its own right." 1 Larson, §14.05[1], n. 1. So, too, is business travel not limited to a particular task. *See*, *e.g.*, *Marsh Creek*, citing 2 Larson, §25.01 (applying the business traveler rule). Similarly, travel to and from work supplied by means of a conveyance operated by the employer may be within the course and scope of employment without resort to the special errand exception. *See* 1 Larson §15.01[1].

[41] *See, e.g., Northern Corporation* (employee injured while returning to work camp "after having spent the evening at the non-commissioned officers' club at the air base"); *M-K Rivers* (employee injured while en route to cash a paycheck). As the court has observed, in remote site cases the employee's residence at the remote site is in itself a benefit to the employer. *M-K Rivers*, 599 P.2d at 135 ("the employer did derive a benefit from having the employee living at the site.").

necessary condition of employment.[42] In this particular case, there is no indication in the evidence that residence at the remote work site was optional, and to that extent it appears that travel to and from the remote site was required. However, Mr. Garwood's trip home was undertaken not at the beginning or end of the job, but on a day off during his temporary residence at the remote site work camp. His travel to his home on that date was not "required" by his employer, but was taken at the employee's choice.

We next consider whether the travel was "supplied" by Black Gold. Clearly, if an employer compensates the employee for travel to or from a remote site, either through payment for travel time or reimbursement of the costs of travel, it may be considered to

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[42] Black Gold concedes that if Mr. Garwood's trip had been made at the beginning or end of the season, it would have been covered by AS 23.30.395(2). Appellants' Reply Brief at 8. The scant legislative history available relating to AS 23.30.395(2) is consistent with this reading.

The legislation enacting AS 23.30.395(2) was accompanied by a bill sectional analysis describing that provision as follows:

> Specifically excluded from coverage are activities of a personal nature not sanctioned by the employer . . . such as . . . travel to and from a job site when employer provided housing is available to the worker. . . . Travel to and from a job site provided or required by the employer . . . [is] not excluded from coverage.

Section by Section Analysis, Senate CS for House Bill 159 (L&C) (1982) (hereinafter, Sectional Analysis).

The statements that the bill specifically excludes "travel to and from a job site when employer provided housing is available to the worker" while at the same time it does not exclude "[t]ravel to and from a job site provided or required by the employer" can be reconciled by reading them to mean that if an employee is required to reside at a remote work site, travel to and from the work site is "required," but if an employee is permitted to reside away from the remote site despite the fact that "employer provided housing is available" at the remote site, travel to and from the remote site is not "required" and hence is not within the course of employment unless the travel is "provided" ("supplied" is the statutory term) by the employer.

have "supplied" the travel, within the meaning of AS 23.30.395(2).[43] Beyond this, according to Larson it is the majority rule that providing a vehicle for the employee's use going to and coming from the employer's premises is sufficient to bring such travel within the course of employment, particularly for trips of a considerable distance.[44] As Larson points out, "There is little difference in principle between furnishing an amount in cash equivalent to the value of the use of the employee's own car and furnishing the car itself."[45] We conclude that the travel Mr. Garwood engaged in was "supplied" by Black Gold, within the meaning of AS 23.30.395(2).[46]

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[43] *See supra*, n. 23; 1 Larson §14.06[1] ("When the employee is paid an identifiable amount as compensation for time spent in a going or coming trip, the trip is within the course of employment. This is a clear application of the underlying principle that a journey is compensable if the making of that journey is part of the service for which the employee is compensated.").

[44] *See* 1 Larson §14.07[1] ("[I]n the majority of cases involving . . . the provision of an automobile under the employee's control, the journey is held to be in the course of employment. . . . The sheer size of the journey is frequently a factor supporting this conclusion. . . .").

[45] *Id.*, at n. 2.

[46] Our decision in this case is based on AS 23.30.395(2) and is limited to travel to and from a remote site. We do not, in this case, decide whether travel in an employer-supplied vehicle may otherwise be within the course of employment. In this regard, we observe that AS 23.30.395(2) does not define the course of employment: it merely identifies specific examples of travel and activities that are included within or excluded from the course of employment. *See* AS 01.10.040 ("When the words 'includes' or 'including' are used in law, they shall be construed as though followed by the phrase 'but not limited to.'"). Decisional law governs otherwise than as provided by AS 23.30.395(2). *See Milos*, 145 P.3d 533, 539 (Alaska 2006) ("Because the statutory definition neither clearly includes nor clearly excludes Milos's actions, we turn to our case law.").

5. Conclusion.

The board's decision is AFFIRMED.

Date: ___*February 19, 2016*___ ALASKA WORKERS' COMPENSATION APPEALS COMMISSION

Signed
Michael J. Notar, Appeals Commissioner

Signed
S. T. Hagedorn, Appeals Commissioner

Signed
Andrew M. Hemenway, Chair

APPEAL PROCEDURES

This is a final decision. AS 23.30.128(e). It may be appealed to the Alaska Supreme Court. AS 23.30.129(a). If a party seeks review of this decision by the Alaska Supreme Court, a notice of appeal to the supreme court must be filed no later than 30 days after the date shown in the commission's notice of distribution (the box below).

If you wish to appeal to the Alaska Supreme Court, you should contact the Alaska Appellate Courts *immediately*:

Clerk of the Appellate Courts
303 K Street
Anchorage, AK 99501-2084
Telephone: 907-264-0612

RECONSIDERATION

A party may ask the commission to reconsider this decision by filing a motion for reconsideration in accordance with AS 23.30.128(f) and 8 AAC 57.230. The motion for reconsideration must be filed with the commission no later than 30 days after the date shown in the commission's notice of distribution (the box below).

I certify that, with the exception of changes made in formatting for publication, this is a full and correct copy of Final Decision No. 223 issued in the matter of *Black Gold Express, Inc. and Insurance Company of the State of Pennsylvania vs. Glinda Garwood (Widow and Personal Representative for the Estate of Mark Garwood),* AWCAC Appeal No. 15-012, and distributed by the office of the Alaska Workers' Compensation Appeals Commission in Anchorage, Alaska, on February 19, 2016.

Date: *February 22, 2016*

Signed
K. Morrison, Appeals Commission Clerk