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Opinion No. 03-085

Definition of "Course of Employment" for Purposes of Eligibility of National Guard Members for Benefits Under Tenn. Code Ann. § 58-1-230

QUESTION

In determining whether a deceased or injured National Guard member was in the "course of employment" at the time of his death or injury as provided in Tenn. Code Ann. § 58-1-230(d)1, what standard should be applied by the appointed board of Tennessee National Guard officers?

OPINION

In determining whether to recommend eligibility for State benefits due to the death or injury of a member of the National Guard as provided in Tenn. Code Ann. § 58-1-230, the appointed board of Tennessee National Guard officers should base its findings and recommendations on whether the injury or death occurred during the course of employment as defined in Tennessee Workers' Compensation Law.

ANALYSIS

Under the provisions of Tenn. Code Ann. § 58-1-230, a member of the National Guard may be compensated for injury or death while performing full-time training or duty under certain circumstances. Prior to submission of any claim for benefits to the Division of Claims Administration, the Adjutant General must appoint a board of Tennessee National Guard officers to conduct a full evidentiary hearing. Tenn. Code Ann. § 58-1-230(d)(1). This board is required to submit:

> . . . its findings and recommendations for approval, certification, and transmittal by the adjutant general to the division of claims administration, that the deceased or injured guard member was in the course of employment at the time of his death or injury or when the disease or injury which produced death was incurred.

Id.

Following receipt of the board's report and recommendations of the Adjutant General, the Division of Claims Administration must then determine whether the injury or death of such member of the National Guard "arose out of and in the course of employment under the Workers' Compensation Law of this state" and, if appropriate, authorize payment of benefits. Tenn. Code Ann. § 58-1-230(d)(2). There is a right of appeal to the Claims Commission for the denial of any claim. Tenn. Code Ann. § 58-1-230(e).

In construing a statute, a court's duty is to ascertain and give effect to the intent and purpose of the Legislature. *State v. Walls*, 62 S.W.3d 119, 121 (Tenn. 2001). Legislative intent or purpose is ascertained primarily from the natural and ordinary meaning of the language used. *State, ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948, 951 (Tenn. 1998). A statute should be construed as a whole and read in conjunction with its surrounding parts. *Kradel v. Piper Industries, Inc.*, 60 S.W.3d 744, 750 (Tenn. 2001).

In construing Tenn. Code Ann. § 58-1-230 as a whole, the legislative intent and purpose appears to be to provide benefits to National Guard members for injury or death arising out of and in the course of their employment consistent with the provisions of Tennessee Workers' Compensation Law. *See also Carpenter v. State*, 838 S.W.2d 525, 527 (Tenn. 1992). This is also consistent with the provisions of Tenn. Code Ann. § 9-8-307(a)(1)(K) giving the Claims Commission exclusive jurisdiction over worker's compensation claims by State employees, including injuries by National Guard members, and directing that the Commission's payment of these claims shall be in such amount and subject to limitations set forth in the Workers' Compensation Law. While some sections of the Workers' Compensation Law, Title 50, Chapter 6, are not applicable to worker's compensation claims against the State, the section defining an injury as one arising out of and in the course of employment, Tenn. Code Ann. § 50-6-102(12), is applicable. *See* Tenn. Code Ann. § 9-8-307(a)(1)(K)(i).

The Tennessee Supreme Court has recognized that the phrases "arising out of" and "in the course of" employment comprise two separate requirements. *Woods v. Harry B. Woods Plumbing*, 967 S.W.2d 768, 771 (Tenn. 1998). An accident "arises out of" employment when there is a causal relationship between the employment and the injury. *Id.* Thus, the phrase "arising out of" refers to an injury's origin. *Id*. On the other hand, the phrase "in the course of" refers to the time, place and circumstances under which the injury occurred. *Loy v. North Brothers Co.*, 787 S.W.2d 916, 918 (Tenn. 1990). The "course of employment" requirement is considered to be met when the injury occurs "within the time and place limitations of the employment relationship and during an activity that had some connection with the employee's job related functions." *Woods*, 967 S.W.2d at 771. Generally, an injury arises out of and is in the course of employment if "it has a rational connection to the work and occurs while the employee is engaged in the duties of his employment." *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991).

Accordingly, it is our opinion that in determining whether to recommend eligibility for State benefits due to the death or injury of a member of the National Guard as provided in Tenn. Code Ann. § 58-1-230, the appointed board of Tennessee National Guard officers should base its findings

and recommendations on whether the injury or death occurred during the course of employment as defined in Tennessee Workers' Compensation Law. This will require a finding as to the time, place and circumstances under which the injury or death occurred to determine whether it has a rational connection to the work and occurred while the National Guard member was engaged in the duties of his employment.

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