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Strange, But True, Cases of Veterinary Law
Thomas A. Carlson, D.V.M., M.S.*

This is one in a series of examinations of unusual, veterinary-related disputes that actually found their way to the courtroom. Review the facts of the case, determine your verdict and see if you agree with the ultimate decision of the court. After examining the “clinical data,” see if you came up with the same “diagnosis” that the legal system did.

The following North Carolina case (FN 1) dealt with a worker (hereinafter; “plaintiff”) employed in a veterinary hospital (owned by “defendant”) who was seeking worker’s compensation benefits for injuries he sustained when he was struck by a hit and run motorcycle driver while crossing the street in front of the veterinary clinic. At specific issue in this case is whether or not the injuries sustained by the worker arose out of or in the course of his employment. If the latter was found to be the case, then the associated costs of his injuries would be covered via worker’s compensation insurance. If his injuries were found to not be derived, then this particular insurance coverage would be denied.

The facts of the case are as follows:

“...plaintiff was employed by defendant in defendant's animal hospital. His duties included caring for the animals, cleaning and performing maintenance work. It was plaintiff’s duty to open the hospital at five o’clock a.m. and to perform his duties alone until his co-workers began to arrive at 7:30 a.m.. While plaintiff was working alone between five and 7:30, he would receive animals delivered early by their owners for treatment.

Plaintiff testified that on the morning of his injury, he “caught up [his] work” at approximately 7 a.m.. Since no one was coming in with an animal and he “had nothing special to do right then,” he went across the street to get a newspaper from a vending machine where he and his co-workers customarily purchased a paper. According to plaintiff, the employees would read the paper during coffee breaks. Plaintiff purchased a newspaper with his own money and began to return to the animal hospital, crossing Battleground Avenue, the street in front of defendant’s premises. As plaintiff was about to set his foot upon his employer’s driveway and while his foot was in the "airspace" above defendant’s premises (emphasis: author), he was struck by a motorcycle and knocked into the street, sustaining injuries. Plaintiff crawled out of the street and waited for an ambulance that a passerby had called. Plaintiff asked a bystander to go and lock the door to the hospital because he had left the door unlocked and the building unattended. After the ambulance arrived and plaintiff was placed inside it, Kay Bernard, the hospital receptionist, arrived and spoke with plaintiff. Plaintiff gave the newspaper to Bernard telling her that he had no more use for it and that the animal hospital employees could read it. Bernard testified that almost every day one of the employees would purchase a newspaper and that she was in the habit of checking the lost and found section of the classified ads for animals in order to help hospital clients. She further testified that if the purchaser of the newspaper did not take it home, it would be used in the animal cages. Dr. Harling, plaintiff’s employer, testified that in the past there had been a morning paper delivered to

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this work place, but that practice had ceased. He knew that plaintiff purchased a newspaper from time to time and approved of the practice, as the employees used the paper primarily on their breaks. Dr. Harling did not ask plaintiff to buy newspapers and he did not reimburse him for them, but he did not require him to punch out when he went to buy one." (FN1)

This case was initially tried before the Industrial Commission. There, a decision was granted in favor of the plaintiff and insurance compensation was then granted to him. The commission cited the following elements as having influenced their decision:

"...that plaintiff was partially on and partially off his employer's premises at the time of the accident; that he went to get the newspaper for the "dual purpose of reading it and using it in their (sic) employment", that the newspaper was to be used for keeping up with lost and found advertisements and in the animal cages; and that plaintiff's employer 'approved [of] the employees' custom of getting a newspaper each day for the dual purpose of informing themselves and advancing the interest of his business'." (FN1)

The defendant then brought the case to the Court of Appeals of North Carolina. At central issue was whether the Commission noted above properly concluded that plaintiff's injury was caused by an accident arising out of and in the course of his employment with the defendant. The appeals court recited the principles it would use in reviewing the case:

Whether an injury that arose out of and in the course of employment is a mixed question of law and fact, and where there is evidence to support the Commissioner's findings in this regard, we are bound by those findings. (FN2) An appellate court is, therefore, justified in upholding a compensation award if the accident is "fairly traceable to the employment as a contributing proximate cause" or if "any reasonable relationship to employment exists." (FN3) In other words, compensability of a claim basically turns upon whether or not the employee was acting for the benefit of his employer "to any appreciable extent" when the accident occurred (emphasis: author). (FN4) Some risk inherent to the employment must be a contributing proximate cause of the accident and the risk must be enhanced by the employment and one to which the worker would not have been equally exposed to apart from the employment. (FN5)

When the employee is injured during a "special errand" undertaken in the furtherance of the employer's business interests, he is entitled to compensation notwithstanding the fact that he is not upon the premises of his employer. (FN6) The employee so injured is entitled to worker's compensation so long as he is performing duties of his employer at the time." (FN7)

In light of the previous decision by the Labor Commission, as well as the comments from the appeals court noted above, how would you decide this case? Turn to page 77 to find the actual decision of the Court of Appeals of North Carolina.
The Court of Appeals decided in favor of the defendant. In doing so, they ruled that the Commission had erred in concluding that the plaintiff's accident arose out of and in the course of his employment. The Court then ruled that the insurance award granted towards the plaintiff by the Commission must be reversed. Specifically in the ruling, the Court noted that the:

"...evidence before the Commission in the present case was not sufficient to support the finding that the plaintiff went to purchase the paper for use in his employment. Rather, all the evidence showed was that the plaintiff's errand was strictly personal and that the paper was to be used by the employees on their break time for personal reasons. The incidental benefits accruing to the employer - having available "lost and found" advertisements and having available old newesprint to use in animal cages - were not appreciable enough to make the plain-
tiff's errand sufficiently work-related to justify compensation." (FN1)

References