ILLINOIS OFFICIAL REPORTS

Appellate Court

***Venture-Newberg Perini Stone & Webster v. Illinois Workers' Compensation Comm'n*, 2012 IL App (4th) 110847WC**

Appellate Court Caption	THE VENTURE-NEWBERG PERINI STONE AND WEBSTER, Appellee, v. ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Ronald Daugherty, Appellant).
District & No.	Fourth District Docket No. 4-11-0847WC
Filed	December 6, 2012
Rehearing denied	January 29, 2013
Held (*Note: This syllabus constitutes no part of the opinion of the court but has been prepared by the Reporter of Decisions for the convenience of the reader.*)	Claimant pipefitter was a "traveling employee" while he was working pursuant to an assignment to a nuclear power plant more than 200 miles from his home and the plant was not the premises of his employer, and the injuries he suffered in a motor vehicle accident while riding to work from the motel at which he was staying arose out of and in the course of his employment, since it was reasonable and foreseeable that his employer would anticipate that claimant would arrange for lodging to perform his duties and would travel a direct route from the motel to the plant where he was working.
Decision Under Review	Appeal from the Circuit Court of Sangamon County, No. 10-MR-509; the Hon. Patrick W. Kelley, Judge, presiding.
Judgment	Circuit court judgment reversed; Commission decision reinstated.

Counsel on Appeal	Jonathan T. Nessler (argued), of Law Offices of Frederick W. Nessler & Associates, Ltd., of Springfield, for appellant. Theodore J. Powers (argued) and Jeffrey N. Powell (argued), both of Rusin, Maciorowski & Friedman, Ltd., of Chicago, for appellee.
Panel	JUSTICE HOFFMAN delivered the judgment of the court, with opinion. Justices Holdridge and Stewart concurred in the judgment and opinion. Justice Hudson dissented with opinion, joined by Justice Turner.

OPINION

¶ 1 The claimant, Ronald Daugherty, appeals the decision of the circuit court of Sangamon County finding that he is not entitled to benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) for injuries he sustained while in the employ of the respondent, The Venture-Newberg Perini Stone & Webster (Venture-Newberg). On appeal, the claimant argues that the circuit court erred in setting aside the Commission's determination that his accident, which occurred while he was traveling from his motel to a jobsite, arose out of and in the course of his employment with Venture-Newberg. For the reasons that follow, we agree, and we therefore reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 2 We begin with a recitation of the relevant facts, drawn from the record of proceedings before the arbitrator. At the time of the accident, the claimant was a 50-year-old pipefitter who resided in Springfield, Illinois. He had worked as a pipefitter for approximately 30 years and was a member of the Plumbers & Pipefitters Union Local 137 (Local 137) based in Springfield. Members of Local 137 bid for jobs at their union hall. Typically, when a member completes a job he or she is terminated and must seek another position. Although members are permitted to take jobs outside of Local 137's home territory provided no work is available locally, they are not required to do so.

¶ 3 Venture-Newberg is a contractor that was hired to perform maintenance and repair work at a nuclear power plant in Cordova, Illinois, operated by Exelon Corporation (Exelon). Cordova is located between 200 and 250 miles from Springfield and is within the home territory of Plumbers & Pipefitters Union Local 25 (Local 25) based in Rock Island, Illinois. Venture-Newberg discussed its manpower needs for the Cordova project with Local 25, and Local 25 posted the positions to its membership. The positions at the Cordova plant were temporary and expected to last only a few weeks. Tradesmen hired for the Cordova job were expected to work between 6, 10-hour days and 7, 12-hour days and could be called in on an emergency basis.

¶ 4 Due to insufficient manpower within its home territory, Local 25 sought members from other locals, including Local 137, to work for Venture-Newberg at the Cordova plant. John Haynes, a business agent with Local 137, advised the claimant of the openings at the Cordova plant. At the time the Cordova jobs were posted, the claimant was unemployed and no work was available locally, so he bid on a job. The claimant and Todd McGill, another member of Local 137, accepted positions at the Cordova plant. Prior to the Cordova job, the claimant had worked for Venture-Newberg on four separate occasions between 2004 and 2006. The length of these four jobs varied and lasted for as few as two weeks to as many as six weeks. The claimant was laid off at the end of each job and had to be rehired for each subsequent job.

¶ 5 The claimant and McGill first reported to work at the Cordova plant on March 23, 2006. After completing their shifts that day, the two men spent the night at the Lynwood Lodge, which is located 30 miles from the jobsite. The men were scheduled to start work the following day at 7 a.m. On the morning of March 24, 2006, the men left the motel for the Cordova plant in McGill's pickup truck. Shortly after 6 a.m., the vehicle, which was being driven by McGill, skidded on a patch of ice while traveling on an overpass. The claimant sustained serious injuries as a result of the motor vehicle accident.

¶ 6 At the hearing on his application for adjustment of claim, the claimant testified that it was his "understanding" that in "most cases," Venture-Newberg requested workers to be within an hour of the jobsite so that they are alert and ready for work. He explained that workers "had to be available just at a phone call, and they would call you and maybe you would come in early or you would stay late, so you had to stay within a certain parameter of the plant." The claimant later testified that he did not want to have to work 12 hours and then drive home and that he planned on staying at the Lynwood Lodge because the jobsite was 200 miles from his residence. The claimant stated that it made sense for him, once he finished his shift, to rest at a hotel and prepare for the next day. The claimant acknowledged that Venture-Newberg did not instruct him to stay at the Lynwood Lodge and that Venture-Newberg did not direct which route to take from the motel to the Cordova plant. Further, Venture-Newberg did not reimburse the claimant or McGill for their travel or lodging expenses or pay the men for the time they spent traveling to the jobsite. Additionally, the claimant stated that he was not instructed to arrive early for work on March 24, 2006, was not called into work for an emergency on the day of the accident, and was not on "on-call status" at the time of the accident.

¶ 7 McGill acknowledged that Venture-Newberg never expressly requested employees to reside near the jobsite. However, he opined that driving a distance of more than 200 miles to the jobsite would make it difficult to work a 12-hour shift and to be available in the event of an emergency. McGill testified that the men were not called to the plant for an emergency on the date of the accident and Venture-Newberg did not ask the men to come in early that day. McGill further testified that Venture-Newberg did not direct him and the claimant to take a particular route to the Cordova plant. In addition, Venture-Newberg did not direct him and the claimant to stay at the Lynwood Lodge, make the arrangements for him and the claimant to stay at that location, pay for the motel accommodations or the men's travel expenses, or compensate them for time spent traveling from the motel to the jobsite.

¶ 8 Haynes testified that Local 137 covers a "fairly broad" geographical area. As a result, members generally have to travel to get to a particular job or project. Haynes testified that the union agreement does not provide for reimbursement of travel or lodging expenses unless "the contractor has sent [the member] away."

¶ 9 Ronald Cahill testified that, in March 2006, he was employed by Venture-Newberg as a radiological and safety supervisor. Cahill testified that although the claimant worked for Venture-Newberg on several other projects, he was not a permanent employee of the company in March 2006. Cahill explained that Venture-Newberg hired workers through the union and would lay off the workers when a project was completed. Tradesmen began receiving pay when they clocked in at the jobsite. Cahill testified that Venture-Newberg did not pay travel or lodging expenses for tradesmen working on the Cordova project in March 2006 and that tradesmen were not compensated for the time spent commuting to and from the jobsite. He stated that Venture-Newberg was required to pay travel expenses only if an existing employee was transferred to a different facility. Cahill stated that the claimant was not transferred to the Cordova plant from another facility in March 2006. Cahill acknowledged that the contract between Exelon, its contractors (including Venture-Newberg), and the unions places the onus upon the unions and the contractors to provide a ready, willing, and able workforce to fulfill the requirements of the contract. He also acknowledged that, by staying at a motel, the claimant benefitted Venture-Newberg and helped it comply with the Exelon contract. He noted that the claimant might not be able to assist in the case of an emergency if he had to travel 200 miles to reach the jobsite.

¶ 10 Based on the foregoing evidence, the arbitrator concluded that the claimant failed to sustain his burden of establishing that the motor vehicle accident arose out of and in the course of the claimant's employment with Venture-Newberg. In a divided decision, the Commission reversed the decision of the arbitrator and concluded that the claimant sustained an accident arising out of and in the course of his employment with Venture-Newberg. The Commission acknowledged that, ordinarily, an accident that occurs while an employee is traveling to or from work is not considered one that arises out of or in the course of employment. However, the Commission found two applicable exceptions. First, the Commission concluded that the claimant was in the course of employment while traveling to work because the course or method of travel was determined by the demands or exigencies of the job rather than by the claimant's personal preference as to where he chose to live. *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 693-94 (1993). Second, relying upon *Chicago Bridge & Iron, Inc.*, the Commission found that the claimant was a "traveling employee" at the time of the accident. On review, the circuit court of Sangamon County set aside the decision of the Commission. This appeal followed.

¶ 11 On appeal, the claimant argues that the trial court erred in setting aside the Commission's finding that his injury arose out of and in the course of his employment. An employee's injury is compensable under the Act only if it arises out of and in the course of his employment. 820 ILCS 305/2 (West 2008). Both elements must be present at the time of the claimant's injury in order to justify compensation. *Illinois Bell Telephone Co. v. Industrial Comm'n*, 131 Ill. 2d 478, 483 (1989).

¶ 12 The determination of whether an injury to a traveling employee arose out of and in the

course of employment is governed by different rules than are applicable to other employees. *Hoffman v. Industrial Comm'n*, 109 Ill. 2d 194, 199 (1985). Our first question, then, is whether the claimant qualified as a traveling employee.

¶ 13 A " 'traveling employee' " is defined as "one who is required to travel away from his employer's premises in order to perform his job." *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545 (2010). It is undisputed that (1) the claimant in this case was employed by Venture-Newberg; (2) he was assigned to work at a nuclear power plant in Cordova, Illinois, operated by Exelon in excess of 200 miles from his home; and (3) the premises at which the claimant was assigned to work were not the premises of his employer. These facts establish the claimant's status as a traveling employee.

¶ 14 This is not to say that the claimant's status as a traveling employee necessarily satisfied his burden of establishing that his injury arose out of and in the course of his employment. A finding that a claimant is a traveling employee does not relieve him from the burden of proving that his injury arose out of and in the course of his employment. *Hoffman*, 109 Ill. 2d at 199. The test of whether a traveling employee's injury arose out of and in the course of his employment is the reasonableness of the conduct in which he was engaged at the time of his injury and whether that conduct might have been anticipated or foreseen by Venture-Newberg. *Howell Tractor & Equipment Co. v. Industrial Comm'n*, 78 Ill. 2d 567, 573-74 (1980). The question is one of fact to be resolved by the Commission, and its determination should not be disturbed on review unless it is against the manifest weight of the evidence. *Aaron v. Industrial Comm'n*, 59 Ill. 2d 267, 269 (1974); *Cox*, 406 Ill. App. 3d at 546. For a finding of fact to be contrary to the manifest weight of the evidence an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 15 In this case, the Commission found that Venture-Newberg must have anticipated that the claimant, recruited to work at Exelon's facility over 200 miles from the claimant's home, would be required to travel and arrange for convenient lodging in order to perform the duties of his job, and that it was reasonable and foreseeable that he would travel a direct route from the lodge at which he was staying to Exelon's facility. Therefore, the Commission concluded that the claimant's injury, sustained when the vehicle in which he was riding to work from the lodge at which he was staying skidded on a public highway, arose out of and in the course of his employment. This determination is clearly not against the manifest weight of the evidence.

¶ 16 Rather than focusing its attention on the issue of whether the claimant was required to travel away from Venture-Newberg's premises in order to perform his job, the dissent fixes the issue as whether the claimant was required to travel away from the only location where he was assigned to work. Then, without citation to authority, the dissent seemingly concludes that, where an employee is hired on a temporary basis only and is assigned by the employer to work at one specific jobsite other than the employer's premises, the assigned location becomes the employer's premises for purposes of applying the traveling-employee rule. We believe that the reasoning of the dissent in this regard was soundly rejected by our supreme court in *Wright v. Industrial Comm'n*, 62 Ill. 2d 65, 69 (1975). As the *Wright* court held, "It would be inconsistent to deprive an employee benefits of workmen's compensation simply

because he must travel to a specific location for a period of time to fulfill the terms of his employment and yet grant the benefits to another employee because he continuously travels." *Wright*, 62 Ill. 2d at 69.

¶ 17 For these reasons, we reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 18 Circuit court judgment reversed; Commission decision reinstated.

¶ 19 JUSTICE HUDSON, dissenting.

¶ 20 An accident that occurs while an employee is commuting to or from work does not arise out of and in the course of employment and is therefore not compensable under the Act. *Commonwealth Edison Co. v. Industrial Comm'n*, 86 Ill. 2d 534, 537-38 (1981); *Warren v. Industrial Comm'n*, 61 Ill. 2d 373, 377 (1975). The rationale for this rule is that the employee's trip to and from work is the result of the employee's decision where to live, which is a matter of no concern to the employer. *Martinez v. Industrial Comm'n*, 242 Ill. App. 3d 981, 985 (1993). Nevertheless, there are several exceptions to this rule. In this case, a divided Commission concluded that two of these exceptions entitled claimant to compensation under the Act. First, the Commission concluded that claimant was in the course of employment while traveling to work because the course or method of travel was determined by the demands or exigencies of the job rather than by claimant's personal preference as to where he chose to live. *Chicago Bridge & Iron, Inc. v. Industrial Comm'n*, 248 Ill. App. 3d 687, 693-94 (1993). Second, relying upon *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 693-94, the Commission found that claimant was a "traveling employee" at the time of the accident. On appeal, a majority of this court concluded that the Commission properly determined that claimant's injuries were compensable pursuant to the traveling-employee exception. I disagree. I also conclude that the second exception cited by the Commission is inapplicable. Accordingly, I respectfully dissent.

¶ 21 A "traveling employee" is defined as "one who is required to travel away from his employer's premises in order to perform his job." *Cox v. Illinois Workers' Compensation Comm'n*, 406 Ill. App. 3d 541, 545 (2010). The majority notes that claimant was employed by respondent and he was assigned to work at a facility operated by another entity. Based on these findings, the majority concludes that claimant qualifies as a traveling employee since "the premises at which the claimant was assigned to work were not the premises of his employer." *Supra* ¶ 13. In my opinion, the majority expands the definition of a traveling employee beyond its intended scope.

¶ 22 Significantly, claimant presented no evidence that he was required to travel away from his assigned work location in order to perform his job. Indeed, claimant's position required no travel from the work site at all. Further, claimant was not required to go to any other location prior to reporting to the Cordova plant. To the contrary, claimant's employment was fixed at a single location. Moreover, when claimant accepted the position with respondent he was aware that the job was located 200 miles from his residence. He voluntarily chose to work for respondent because no work was available within Local 137's home territory. I

believe that the majority's position will lead to anomalous and unintended results. It would allow an employee who voluntarily chooses to live remotely from the place of employment to become a traveling employee and receive workers' compensation benefits for injuries while traveling to and from work from a temporary residence. Perhaps more significantly, under the approach taken by the majority, everyone hired at the Cordova plant on a temporary basis, even individuals residing in close proximity to the plant, would arguably became a traveling employee.

¶ 23 In finding that the claimant was a traveling employee, the Commission relied on *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d 687. Claimant also cites to *Chicago Bridge & Iron, Inc.* in this appeal. However, that case is distinguishable. In *Chicago Bridge & Iron, Inc.*, the employee was an itinerant boilermaker-welder. He was hired by the employer in 1968. Thereafter, the employee worked regularly and exclusively for the employer and was periodically required to travel to work sites located in other states. When each job began, the employee was placed on the payroll and he filled out the required tax forms. When the job was completed, the employee was terminated from the payroll. The employer was under no obligation to notify the employee when work was available, and the employee was not under any obligation to accept the job offered. On April 24, 1987, the employer's field personnel manager contacted the employee in Illinois about a job in Minnesota. The employee agreed to go to the jobsite. On April 26, 1987, the employee drove to Minnesota, located the jobsite, and spent the night at a motel. The following morning, claimant was injured in a car accident as he was traveling from the motel to the jobsite. *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 688-89.

¶ 24 The arbitrator denied compensation, finding, *inter alia*, that the employee was not a traveling employee. The arbitrator reasoned that the employee would have had to arrive at the jobsite and commence employment to be considered a traveling employee. The Commission reversed, concluding that the employment began in Illinois when the employee was hired and that he was a traveling employee engaged in reasonable and foreseeable conduct traveling in a direct route from the motel to the jobsite at the time of the accident. On appeal, we affirmed the decision of the Commission, explaining:

> "At oral argument both parties seemed to agree that had the [employee] never worked for the employer prior to receiving the call from [the field personnel manager], he would not be a traveling employee. We agree. Conversely, if the [employee] had not been terminated from the payroll after each job, we would have little difficulty characterizing him as a traveling employee.
>
> While the facts *sub judice* are different than either of the above, we judge them closer to the latter. *Given [the employee's] long-standing (19 years) and exclusive employment with the employer*, and considering that the purpose of the Act is to provide financial protection for injured workers through prompt and equitable compensation [citations], we do not believe that the finding of the Commission that the [employee] was a traveling employee was against the manifest weight of the evidence." (Emphasis added.) *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 694.

Critical to our decision in *Chicago Bridge & Iron, Inc.* was the fact that the employee worked

regularly and exclusively for the employer for an extended period of time. In this case, claimant was not employed *exclusively* for respondent. Moreover, given that claimant only worked four short stints for respondent in the two years preceding the accident, I cannot conclude that he worked *regularly* for respondent or that he was a *long-standing* employee. Further, I note that the employee in *Chicago Bridge & Iron, Inc.* was "periodically *required*" to travel. (Emphasis added.) *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 688-89. In contrast, claimant knew he would be assigned to work at the Cordova jobsite when he accepted the job and he was not "required" to travel away from that location. For these reasons, the Commission's reliance on *Chicago Bridge & Iron, Inc.* for the proposition that claimant is a traveling employee is misplaced.

¶ 25 The Commission also cited to *Wright v. Industrial Comm'n*, 62 Ill. 2d 65 (1975). The Commission's reliance on *Wright* is misplaced as well. In *Wright*, it was undisputed that the employee's duties required him to travel away from the employer's premises. *Wright*, 62 Ill. 2d at 67 ("These duties frequently required that [the employee] travel to out-of-state locations and remain there during the installation of the machinery for 5 to 6 month periods."). As noted above, in this case claimant was not required to travel away from the site to which he was assigned to perform his job.

¶ 26 In sum, I would hold that in cases such as this, where an employee is hired on a temporary basis only and is assigned by the employer to work at one specific jobsite for the duration of the employment, that assigned location becomes the employer's "premises" for purposes of the application of the traveling-employee rule. Of course, if the employee is directed or required to work away from the assigned location during the period of temporary employment, the employee would then become a traveling employee under the law. This interpretation would lead to results more grounded in the true considerations of a given case and be more consistent with the purpose of the traveling-employee rule. That is, it is the requirements or directions of the employer, not a voluntary decision by the employee, that determines whether an individual is classified as a traveling employee.

¶ 27 The Commission also found that claimant is entitled to benefits because the course or method of travel to the Cordova plant was determined by the demands or exigencies of claimant's job with respondent rather than by his own personal preference as to where to live. I refer to this exception as the "exigency exception."

¶ 28 The exigency exception appears to have its origin in *Sjostrom v. Sproule*, 33 Ill. 2d 40 (1965). In that case, the plaintiff and the defendant were engineers for Armour & Co. (Armour). Both men resided in Chicago. Chicago was also the location of Armour's main office. In 1952, the men were assigned to supervise the construction of a plant in Bradley, Illinois. Armour would reimburse the men for the expenses they incurred while commuting to and from Bradley. The type of reimbursement depended on whether the employee used his own car, in which case reimbursement was on a per-mile basis, or whether the employee used a company car, in which case reimbursement was for the cost of gasoline and oil. To eliminate the duplicate expense involved in reimbursing both the plaintiff and the defendant, a supervisor at the Bradley plant asked the men to carpool. On December 4, 1952, the defendant left his house in his own car to pick up the plaintiff. While driving to Bradley, the men were involved in an automobile accident. The plaintiff sued the defendant for his

injuries.

¶ 29 The issue before the supreme court in *Sjostrom* was whether section 5 of the Act barred the plaintiff's lawsuit because the men were in the "line of duty" at the time of the accident. See Ill. Rev. Stat. 1963, ch. 48, ¶ 138.5 (now codified, as amended, at 820 ILCS 305/5 (West 2006) (barring an action by an employee against the employer or his employees "for injury or death sustained by any employee while engaged in the line of his duty as such employee")). The supreme court equated the "line of duty" inquiry to the general test of compensability under the Act, *i.e.*, whether the employee's injuries arose out of and in the course of his employment. *Sjostrom*, 33 Ill. 2d at 43. Applying the test, the court determined that the Act barred the plaintiff's action. *Sjostrom*, 33 Ill. 2d at 44. The court recognized that, as a general rule, accidents that occur while an employee is going to or from his place of employment do not arise out of and in the course of employment. *Sjostrom*, 33 Ill. 2d at 43. Nevertheless, the court concluded that "the nature of an employee's job is sometimes such that his trip to work is determined by the demands of his employment rather than personal factors." *Sjostrom*, 33 Ill. 2d at 43-44. The court found that the men traveled to Bradley to accommodate Armour rather then themselves. *Sjostrom*, 33 Ill. 2d at 44. In this regard, the court noted that Bradley was not the regular place of work of the plaintiff or the defendant, that the men were assigned to that location on a temporary basis, and that Armour exercised "control" over the method of travel to insure that only one of the parties would be reimbursed. *Sjostrom*, 33 Ill. 2d at 43-44.

¶ 30 The exigency exception was later discussed in *Lopez v. Galeener*, 34 Ill. App. 3d 815 (1975). In *Lopez*, Gibson Galeener operated a feed store in town and a poultry farm about 1½ miles outside of town. Galeener hired two young men, Richard Schuette and Douglas Lopez, to work on the poultry farm. Galeener provided a shower room at the feed store where those who worked at the poultry farm could change clothes. One afternoon, Schuette and Lopez went to the feed store after school. They changed their clothes, and left with another young man, Lawrence Hess, for the poultry farm in Galeener's station wagon. En route, they stopped at a café for about 20 minutes, drinking soda and talking to friends. When completing their journey to the poultry farm, the station wagon, then operated by Hess, was struck by an automobile, resulting in injury to Schuette and death to Lopez. Schuette and the administrator of Lopez's estate filed an action against Galeener and Hess. At trial, there was conflicting testimony regarding whether Schuette and Lopez were required to report to the feed store in town before beginning their work at the poultry farm. A special interrogatory was submitted to the jury which required the jury to state whether Schuette and Lopez were in the line of their duty as employees of Galeener. The jury answered the special interrogatory in the negative and returned a verdict in favor of the plaintiffs. *Lopez*, 34 Ill. App. 3d at 816-18.

¶ 31 Like *Sjostrom*, the issue presented on appeal in *Lopez* was whether the plaintiffs were engaged in the line of their duty as employees of Galeener when they were involved in an automobile accident and therefore precluded from recovering from the defendants under section 5 of the Act. In rejecting the defendants' request for judgment notwithstanding the verdict, the appellate court explained:

"The defendants *** have argued that the travel of Schuette and Lopez from the feed

store to the poultry farm was occasioned by the demands or exigencies of their employment with [defendant] Galeener. The evidence, when viewed most favorably to plaintiffs shows they were not required by their employment to go to the feed store, and that they were not required by their employment to travel from the feed store to the poultry farm. The most that can be said about the relationship of Schuette and Lopez to the feed store is that Schuette and Lopez could go to the feed store to change their clothes if they desired to do so. This certainly does not overwhelmingly prove that the presence of Schuette and Lopez at the feed store or that the traveling by Schuette and Lopez from the feed store to the poultry farm was brought by the demands or exigencies of the employment. The verdict of the jury that Schuette and Lopez were not engaged in the line of their duty at the time of the accident was therefore supported by the evidence." *Lopez*, 34 Ill. App. 3d at 819-20.

¶ 32 The applicability of the exigency exception was addressed in *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 693. There, the employee was injured while driving to a jobsite. This court found that the exigency exception did not apply. *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 693. We explained that while the employer gave the employee directions to the jobsite, he was free to use any route he chose to reach his destination. *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 693.

¶ 33 The foregoing cases establish that the applicability of the exigency exception entails an examination of the control the employer exercised over the course or method of the employee's travel to the jobsite. In *Sjostrom*, the exigency exception was found to apply because the employer assigned the employees to a location away from their regular jobsite and asserted control over the employees' method of travel to insure that only one of the parties would be reimbursed. *Sjostrom*, 33 Ill. 2d at 43-44. In *Lopez*, the exigency exception was found not to apply because the employer did not require the employees to stop at the feed store prior to traveling to the poultry farm. *Lopez*, 34 Ill. App. 3d at 819-20. Similarly, in *Chicago Bridge & Iron, Inc.*, the exigency exception was found not to apply because the employer did not direct the employee to use a particular route to reach his destination. *Chicago Bridge & Iron, Inc.*, 248 Ill. App. 3d at 693.

¶ 34 Here, the Commission determined that respondent "did not demand that [claimant] lodge within a certain distance from the plant in order to perform the work that was required." I agree that the record supports such a finding. Despite this determination, the Commission went on to find that, "as a practical matter," claimant had to stay within a reasonable commuting distance from the plant. The Commission explained that claimant was required to come to work ready and fit to perform tasks that required special skills, that he was expected to work 10 to 12 hours a day up to 7 days a week, and that he was expected to be available to work additional hours in the event of an emergency. On appeal, claimant cites these same factors in support of his argument for application of the exigency exception. However, neither claimant nor the Commission explains how these factors establish that respondent controlled the course or method of claimant's travel to the Cordova plant. Additionally, I do not find these factors relevant to application of the exigency exception in this case. Notably, I would expect all employers to want their workers to come to work ready and fit to perform their duties. Moreover, claimant was aware of his work hours when he

accepted the job and there was no evidence that he was called in early on the day of the accident. Finally, the fact that respondent expected its employees to be available in the case of an emergency is not relevant since claimant acknowledged that he was not called into work for an emergency on the day of the accident. See 1 Arthur Larson, Larson's Workers' Compensation Law § 14.05[6], at 14-14 (2009) ("The circumstance that the employee is 'subject to call' should not be given any independent importance in the narrow field of going to and from work; the important questions are whether the employee was in fact on an errand pursuant to call, and what kind of errand it was.").

¶ 35 For the reasons set forth above, I would conclude that claimant is not entitled to benefits under the Act because he was injured while commuting to work and he failed to establish the existence of any exception to the general rule that injuries sustained while going to and coming from work are not compensable. As such, I would affirm the judgment of the circuit court of Sangamon County, which set aside the decision of the Commission. Accordingly, I dissent.

¶ 36 Justice Turner joins in this dissent.