

1977 S.C. Op. Atty. Gen. 142 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-185, 1977 WL 24527

Office of the Attorney General

State of South Carolina

Opinion No. 77-185

June 14, 1977

***1** Injuries sustained directly by a volunteer fireman while travelling in his personal vehicle to or from the scene of a fire are compensable under the South Carolina Workmen's Compensation Act.

TO: John W. Scott

Director

State Workmen's Compensation Fund

QUESTION PRESENTED:

Are injuries sustained by a volunteer fireman while travelling in his personal car, without compensation for mileage, directly to and from the scene of a fire compensable under the South Carolina Workmen's Compensation Act?

CITATION OF AUTHORITIES:

Statutes: Section 72-1, et seq., Code of Laws of South Carolina, (1962), as amended;

Cases: [Beam v. State Workmen's Compensation Fund](#), 261 S. C. 327, 200 S. E. 2d 83 (1973); [Bickley v. South Carolina Electric and Gas Co.](#), 259 S. C. 463, 192 S. E. 2d 866 (1972); [Eargle v. South Carolina Electric and Gas Co.](#), 205 S. C. 423, 32 S. E. 2d 240 (1944).

Treatises: 1 Larson's Workmen's Compensation Law, Sec. 16.00.

DISCUSSION:

In order for injuries sustained by a volunteer fireman while travelling directly to or from the scene of a fire in his own car, without compensation for mileage, to be compensable under the South Carolina Workmen's Compensation Act, Section 72-1, et seq., of the Code of Laws of South Carolina (1962), as amended, it must be established that the volunteer fireman (1) is an 'employee' within the meaning of the Act, and (2) that his injury 'arose out of and in the course of the employment.'

With respect to the first requirement, it is readily apparent that a volunteer fireman, whose membership has been certified to the city or town clerk or the chairman of the county governing body by the chief of the fire department as required by Section 72-4 of the Code of Laws of South Carolina (1975 Cumulative Supplement), is an 'employee' within the meaning of the South Carolina Workmen's Compensation Act, supra. Section 72-4 provides that organized voluntary rural fireman and voluntary fireman of municipalities shall be deemed to receive an average weekly salary of eighty-four dollars when computing an award of workmen's compensation, which is additional evidence of the Legislature's intent to provide compensation to volunteer fireman. Thus the compensability for the type of accident being considered here is dependent upon whether the accident arose out of and in the course of the volunteer fireman's employment.

The South Carolina Supreme Court in [Eargle v. South Carolina Electric and Gas Co.](#), 205 S. C. 423, 32 S. E. 2d 240 (1944), stated that the term 'arose out of' refers to the origin of the cause of the accident, while the term 'in the course of' refers to

the time, place and circumstances under which the accident occurred. Although the general rule is that injuries sustained by an employee while on his way to or from work and away from the premises of the employer do not arise out of and in the course of employment, there are several recognizable exceptions to this general 'coming and going rule.' See [Bickley v. South Carolina Electric and Gas Co.](#), 259 S. C. 463, 192 S. E. 2d 866 (1972).

*2 One of the exceptions to the 'coming and going rule' is 'when the making of that journey, or the special degree of inconvenience or urgency under which it is made, whether or not separately compensated for, is in itself a substantial part of the service for which the worker is employed.' I Larson's Workmen's Compensation Law, Sec. 16.00. Since the furnishing of transportation to and from the scene of a fire saves the fire department the expense of transporting the volunteer fireman to and from a fire and also enables the fireman to proceed promptly and directly to and from the scene of the fire, it is self-evident that such a journey represents a substantial part of the volunteer fireman's service to the fire department and the community. Therefore it appears that the volunteer fireman's furnishing of his own transportation directly to and from the scene of the fire is incidental to his duties, and injuries sustained thereby arise out of and in the course of employment so as to be compensable under the South Carolina Workmen's Compensation Act, *supra*. See [Beam v. State Workmen's Compensation Fund](#), 261 S. C. 327, 200 S. E. 2d 83 (1973).

While an injury occurring on the way to a fire would generally be compensable, injuries occurring after the fire is over many present special problems. The trip from the fire must be examined to determine if the time, place and circumstances under which the accident occurred make resulting injuries compensable.

CONCLUSION:

Since a volunteer fireman is an 'employee' covered by the South Carolina Workmen's Compensation Act and since the furnishing of his own transportation to and from the scene of the fire represents a substantial part of his service to the fire department and the community, injuries sustained by a volunteer fireman while on the way directly to go from a fire are compensable under the South Carolina Workmen's Compensation Act, Section 72-1, *et seq.*, of the Code of Laws of South Carolina, (1962), as amended.

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