West Valley City asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of benefits to W. T. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

On March 22, 2000, William T. was employed as a police officer by West Valley. As he was driving his police car to the police station to report for duty, he was injured in a traffic accident. On February 20, 2002, Officer T. filed an Application For Hearing with the Commission to compel West Valley to pay workers' compensation benefits for his injuries. Judge La Jeunesse conducted an evidentiary hearing on Officer T.'s claim on December 2, 2002, then, on June 25, 2003, issued his decision awarding benefits.

West Valley now asks the Commission to set aside Judge La Jeunesse's award of benefits to Officer T. on the grounds that his injuries are not compensable under the Act because they did not "arise out of and in the course of" his employment.

FINDINGS OF FACT

The parties do not contest Judge La Jeunesse's findings of fact, which are hereby adopted by the Commission. As relevant to the issue raised by West Valley's motion for review, the facts can be summarized as follows.

Pursuant to its written "Car Per Officer Program," West Valley assigned a specific marked police car to Officer T. and allowed him to drive the car to and from work. The "Car Per Officer Program" makes it abundantly clear that the entire purpose of the program is to benefit West Valley by providing: 1) faster response to police calls; 2) increased police presence throughout the city; 3) casual assistance to the public; and 4) economy in fleet maintenance. The program also imposes substantial controls and obligations on the participating officers regarding vehicle use, routes of travel, maintenance, presence of police-related equipment and supplies, and personal attire, among other things. Furthermore, the program requires officers to monitor their police radios, respond to emergency calls and discharge other police-related functions, whether or not the officer is officially "on duty."

On March 22, 2000, pursuant to the "Car Per Officer Program," Officer T. drove his marked police car from his home in Erda, Utah, toward his assigned police station in West Valley. After entering West Valley, he stopped his police car at a stop light. Another motorist failed to stop and a collision ensured, resulting in the injuries for which Officer T. now seeks benefits.

DISCUSSION AND CONCLUSION OF LAW

The Utah Workers' Compensation Act provides benefits to workers injured by accident "arising out of and in the course of" the workers' employment. The critical issue in this case is whether Officer T.'s auto accident on March 22, 2000, arose out of and in the course of his employment as a police officer with West Valley.

It is clear that, at that time of his accident, Officer T. was traveling to his police station to report for duty. West Valley contends that he is therefore subject to the "coming and going rule," which generally precludes compensation for workers injured on the way to and from work. However, whether the "coming and going" rule applies in a particular case depends on the specific facts of the case.

> The major premise of the "going and coming" rule is that it is unfair to impose unlimited liability on an employer for conduct of its employees over which it has no control and from which it derives no benefit. Therefore, the major focus in determining whether or not the general rule should apply in a given case is on the benefit the employer receives and his control over the conduct. (emphasis added.)

Whitehead v. Variable Annuity Life Ins., 801 P.2d 934, 937 (Utah 1989).

Thus, the Commission must consider whether West Valley benefitted from Officer T.'s travel to work in his police car and whether West Valley had control over that travel. West Valley's written "Car Per Officer Program" answers both those questions. It is clear that West Valley derived substantial benefit from the program. In fact, the program was implemented entirely for West Valley's benefit. It is also clear that West Valley exercised substantial control over the details of the travel.

In view of the foregoing, the Commission concludes that the "going and coming" rule is not applicable under the facts of Officer T.'s employment and that the injuries he suffered in the motor vehicle accident of March 22, 2000, arose out of and in the course of his employment. He is therefore entitled to workers' compensation benefits for those injuries.

ORDER

The Commission affirms Judge La Jeunesse's decision and denies West Valley's motion for review. It is so ordered.

Dated this 11th day of December, 2003.

R. Lee Ellertson, Commissioner