IN THE SUPREME COURT
STATE OF FLORIDA

CASE *No. 94,998*

CAROLINE GILBERT,

Petitioner,

v.

PUBLIX SUPERMARKETS
and
CARE ADMINISTRATORS SERVICES,

Respondents.

ANSWER BRIEF ON THE MERITS OF PUBLIX SUPERMARKETS and CARE ADMINISTRATORS SERVICES

ON DISCRETIONARY F&VIEW FROM THE FIRST DISTRICT COURT OF APPEAL

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CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is "CG Times, " 14 point.

INTRODUCTION

Caroline Gilbert has invoked the Court's conflict jurisdiction to review the district court's decision in ***Gilbert v. Publix Supermarkets, 724 So.*** 2d 1222 (Fla. 1st DCA 1998), a copy of which is attached as Appendix 1, and the Court has tentatively accepted jurisdiction. Publix Supermarkets and Care Administrators Services (collectively referenced as "Publix") respectfully suggest that jurisdiction was improvidently granted.

Ms. Gilbert does not present a case of decisional conflict, let alone one which is express and direct as the Constitution requires.[1] She identifies two cases with entirely different factual contexts, states no way in which her case poses disagreement or disharmony with the legal principle applied in those two cases, and offers no policy reason for the Court to address the well-settled statutory doctrine known as the "going and coming" rule of workers' compensation law.

Ms. Gilbert's position before the Court is candidly acknowledged to be nothing more than displeasure with the district court's decision — that the court misapplied the law to "the facts of this case." Initial Brief at 19. Having lost her claim for compensability twice before the Judge of Compensation Claims ("the Judge"), and again before three judges of the First District Court of Appeal, she simply wants ***another*** record review in the hope of getting a different outcome. This Court has consistently declined to exercise its jurisdiction for third-level record review, and it should decline to do so here by discharging the writ as improvidently granted.

Were the Court to entertain the merits of Ms. Gilbert's request for review, the decision of the district court would have to be affirmed. As the district court

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[1] Art. V, section 3(b)(3), Fla. Const.

stated, the findings of the Judge of Compensation Claims are supported by competent substantial evidence in the record. Ms. Gilbert's suggestion to the contrary, with repeated declarations that facts supporting her claim are "undisputed, " is *not* supported in the record.

STATEMENT OF THE CASE

In the lower courts, Ms. Gilbert asserted her entitlement to workers' compensation benefits on several of the legal theories which constitute exceptions to the statutory bar of the going and coming rule. Principal among the issues she argued were claims that she was an "on call" employee by reason of her 24-hour a day responsibilities; that she did not have fixed or regular hours of work when going to or coming from her regular place of work; that her home was a separate, "second premise" for work because she prepared the store newsletter there; that she had commenced her work day before leaving her home; that delivery of the newsletter to the store was a special "mission"; and that her transport of the newsletter constituted a dual purpose for her trip to the store on the day of her accident .[2]

Ms. Gilbert's multiple theories for claiming workers' compensation benefits were first presented to the Judge in multiple hearings over the course of

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[2] These theories were generally identified in the Table of Contents for Ms. Gilbert's initial brief to the First District Court of Appeal, a copy of which is attached as Appendix 2. Ms. Gilbert hints at some of these theories in her Statement of the Case and her Statement of the Facts, but she specifies that the "dual purpose" doctrine is the only issue brought to the Court, Initial Brief at 14, 20.

almost twelve months.[3] At the end of that process, the Judge entered an order rejecting Ms. Gilbert's claim that she was injured in the course and scope of her employment. Vol. IX at 1777-89. On Ms. Gilbert's motion for rehearing, the Judge vacated that order. Vol. X at 1807-08. After another evidentiary hearing, the Judge entered another order which denied compensability. Vol. XII at 2209-24. Ms, Gilbert then submitted another motion for rehearing, and following additional argument on her legal theories the Judge again denied compensability. Vol, IV at 610.

On review of the Judge's decision, the district court "affirmed on all issues, " but it wrote briefly to address compensability questions. 724 So. 2d at 1222. The only two issues which the court chose to address were Ms. Gilbert's contention that her home was a "second premise" for her job, and her contention that her drive to work on the day of the accident had a dual purpose. Her "second premise" argument, as to which the district court held that competent substantial evidence supported the finding of the Judge (724 So. 2d at 1222), is not presented as an issue for the Court to consider.

Ms. Gilbert has now abandoned all theories for recovery of compensation under the workers' compensation law other than the dual purpose doctrine — a claim that her commute to open the Publix store on the morning of her accident was in part for a "business" purpose. On that issue, the district court held that her delivery of the newsletter was not essential to her job responsibilities for Publix, but rather was "merely an incidental part of the trip." *Id.*

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[3] The Judge of Compensation Claims held hearings or conferences on Ms. Gilbert's claim in 1996 on May 15, June 3 and 20, August 2, September 26, October 2 and 16, and November 22, and in 1997 on January 27 and February 27.

STATEMENT OF THE FACTS[4]

The store "newsletter" that forms the basis of Ms. Gilbert's claim for compensation is a typed, single page document. Vol. VIII at 1497. Ms. Gilbert states that she was responsible for its preparation each week, and obliged to have it at the store each and every Thursday morning for distribution with employees' paychecks. Initial Brief at 9. The record establishes a different set of facts, however.

While Ms. Gilbert had indeed assumed responsibility to prepare a weekly store newsletter (Vol. II at 262), the newsletter had only recently begun to be circulated within the store. Vol. II at 354. Ms. Gilbert was expected to prepare the newsletter at work and *not* at her home. Vol. II at 355 ("It was to be done at the store during her work scheduled time"), 357 and 364 (the store manager "expected [the newsletter] to be [at the store] Wednesday if she was off on Thursday"). Ms. Gilbert had *no* duty to deliver the newsletter on Thursdays she was not otherwise obliged to work. Vol. II at 363 ("She was not expected to bring it in on her day off. That was her choice. "). Its distribution with employee paychecks was *not* required. Vol. II at 278 (according to Assistant Store Manager and Ms. Gilbert's immediate supervisor, Michael Seithel), and 363-64 (according to Store Manager and Ms. Gilbert's top supervisor at the store, David Curry); 724 So. 2d at 1222.

The record establishes that Publix did not pay for the office equipment in Ms. Gilbert's home, and that it did not reimburse her for the time or expense of

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[4] Pursuant to the 1997 Committee Notes to Rule 9.210(c), Publix provides this statement of its disagreement with the facts set forth in Ms. Gilbert's initial brief.

bringing the newsletter with her to the store. Vol. II at 234, 373; Vol. XII at ***2218.***

Ms. Gilbert states she prepared the newsletter at her home because there was no typewriter in the store. Initial Brief at 10. The record establishes, however, as the district court held, that she prepared the newsletter at home entirely for her own convenience. There was a computer at the store which she could have used for the newsletter, and which she did on occasion use for that very purpose. Vol. II at 282-83, 361 ("There was a way to do [the newsletter] at work. That's where she was supposed to have done that."), 385 (there was equipment at the store that could create or type the newsletter), 386 (there was a way of creating the document at Publix and Ms. Gilbert was encouraged to perform that task there); 724 So. 2d at 1222.

Ms. Gilbert asserts that she brought the newsletter to the store on Thursdays when she was not scheduled to work, and would have driven to the store before 8:00 a.m. on the Thursday of her accident even if she had not been responsible to open the store that day at 4:00 a.m. Initial Brief at 11. There is no record support for this assertion. There is testimony that she did in fact, on occasion, bring in the newsletter on days she was not otherwise working (Vol. II at 266, 356), but nothing to indicate this was required of her or that she would have done so on the Thursday of her accident.

In fact, a contrary inference is warranted. Ms. Gilbert arranged to open the store on the day of her accident solely for ***her*** convenience, having swapped her scheduled Friday opening of the store with another employee so she could keep a pre-scheduled, personal dental appointment on Friday. Initial Brief at 12; Vol. I at 108-09; Vol. II at 233, 385; Vol. IX at 1783; Vol. XII at 2210, 2216.

SUMMARY OF ARGUMENT

The Court's grant of conflict review was improvidently granted. There is no decisional conflict between this case and the two cases on which Ms. Gilbert relied for conflict.

Based on competent substantial evidence in the record, the going and coming rule was properly applied in the first instance by the Judge of Compensation Claims, and the findings of the Judge were properly affirmed by the district court.

ARGUMENT

I. Jurisdiction was improvidently granted, as the district court's decision is not in express and direct conflict with any Florida appellate court decision.

The Court has tentatively accepted jurisdiction to review Ms. Gilbert's workers' compensation claim based on an alleged conflict between the district court's decision and this Court's decisions in *Cook v. Highway Casualty Co.*, 82 So. 2d 679 (Fla. 1955), and *Nikko Gold Coast Cruises v. Gulliford*, 448 So. 2d 1002 (Fla. 1984).[5] Decisional conflict is wholly absent, however, and it is certainly not in conflict "expressly and directly" as the Constitution requires. The district court, like the Judge on two occasions following evidentiary hearings, applied the statutory "going and coming" rule to the factual record developed by Ms. Gilbert using exactly the same legal principles which the Court announced in *Cook* and applied in *Nikko*.

There is absolutely no conflict with *Cook*. The Court's *Cook* decision did nothing other than adopt for Florida the "concurrent cause" doctrine of the going

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[5] Amended Initial Brief on Jurisdiction at 5; Initial Brief at 15-16, 25, 32.

and coming rule — the legal principle that compensation will not be barred when a business purpose co-exists with a personal purpose for a trip during which the employee suffered an injury, and that "no nice inquiry" will be made to determine the relative importance of the concurrent business and personal motives for the trip. 82 So. 2d at 682 (quoting a Mississippi decision the Court was choosing to follow). The Court made no finding of compensability or non-compensability in ***Cook,*** however. It simply announced its adoption of the dual purpose doctrine and then remanded the case to the fact-finder for a re-evaluation of the merits.

The district court in this case did not repudiate or contravene the dual purpose doctrine as articulated in ***Cook.*** It merely held that the doctrine did not pertain to Ms. Gilbert's commute, based on record support for the factual finding of the Judge that the presence of the store newsletter in her car on the day of her accident was completely incidental, and that she would not have made the drive with the newsletter if she had not otherwise been obligated to open the store on that day. 724 So. 2d at 1222.

The district court's decision is fully consistent with ***Cook.*** Nothing in that decision mandates an application of the dual purpose exception to the going and coming rule when the transport of work paraphernalia is merely incidental to a commute, and not essential to the employee's job responsibilities. ***E.g., Nikko, 448 So.*** 2d at 1004; ***United States Fidelity and Guaranty Co. v. Rowe,*** 126 So. 2d 737 (Fla. 1961) (rejecting compensability for the incidental transport of work-related cash funds back to the work place in the course of a normal return to work).

Ms. Gilbert presents no better argument for "conflict" with respect to the Court's decision in ***Nikko*** than she did with respect to its decision in ***Cook.*** ***Nikko,*** which involved cash being transport from the employee's workplace,

came to the Court based on a conflict with ***Rowe*** and, in the Court's opinion, "differs significantly, " ***448 So.*** 2d at 1004. In ***Nikko,*** the funds being transported on Mr. Gulliford's commute to work on the day of his accident had been taken home the night before, and were being returned as an employer-mandated job responsibility which was based on a "complete understanding between himself and his employer as to ***the essential*** nature of his task." ***Id.*** (emphasis added), As a job responsibility indispensable to the operation of the business for which he worked, Mr. Gulliford was required to safeguard the employer's daily cash receipts overnight and return them to his employer's business the next day. That responsibility meant that, even if he did not intend to come to work the next day, he would be required to make a trip to the employer's work place or to arrange for someone else to take the operational cash to the business site. ***Id.***

There is no "conflict" between ***Nikko*** and the decision of the district court in Ms. Gilbert's case. From the four corners of its decision, the district court's opinion describes a factual scenario of an employee who, as matter of personal convenience, prepared a store newsletter at home and happened to have it in her car when she undertook her commute to begin work on the day of the accident, As the district court stated, Ms. Gilbert had prepared the newsletter at her home "for her convenience, " that it was "not necessary" that it be brought to the store on the morning of her accident, that her transport of the newsletter was "an incidental part of her trip, " and that she would not have made the drive if her "personal motive (going to work) was removed. " 724 So. 2d at 1222. Those facts in no way present an express and direct conflict with ***Nikko,*** or suggest disharmony in the application of the going and coming rule which would warrant the Court's having to express an opinion on the subject. It is highly relevant to the Court's jurisdiction that neither Ms. Gilbert's jurisdictional brief nor her

initial merits' brief asks the Court to make any clarification of the workers' compensation law in any respect, or to harmonize any policy which the district court's decision is claimed to have disrupted, She points to nothing by way of law, principle or policy in the district court's decision which is at odds with any law, principle or policy in Cook or in ***Nikko.***

Ms. Gilbert asks the Court only for a third-level, record review; nothing more. The Court has not previously retained jurisdiction, although tentatively granted, when there is no facial conflict and no policy reason to grant the petitioner a third, plenary record review. See, ***e.g., DiPietro v. Griefer, 732 So.*** 2d 323 (Fla. ***1999); St. Mary's Hospital, Inc. v. Brinson,*** 709 So. 2d 105 (Fla. 1998). Under the Constitution in its present form, record review is left to the judges of the district ***courts. Jenkins v. State,*** 385 So. 2d 1356, 1359 (Fla. 1980).

II. The district court properly affirmed the finding of the Judge of Compensation Claims which denied workers' compensation benefits for Ms. Gilbert.

Ms. Gilbert has streamlined her position before this Court to abandon all but one of the multiple, alternate theories under which she sought to be compensated for her commute to work on the morning of her unfortunate accident! She presents the Court only with a claim for compensation grounded on the dual purpose exception to the going and coming rule of non-compensability. An application of the dual purpose doctrine is factually intensive, though, and Ms.

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[6] Issues not argued in a brief are deemed abandoned. ***E.g., F.M.W. Properties, Inc. v. Peoples First Financial Savings & Loan Ass 'n, 606 So.*** 2d 372, 377 (Fla. 1st DCA ***1992); Florida Ass 'n of Nurse Anesthetists v. Dep 't of Prof. Regulation, Board of Dentistry, 500 So.*** 2d 324, 327 (Fla. 1st DCA 1986), ***review denied,*** 509 So. 2d 1117 (Fla. 1987).

Gilbert cannot sustain her burden of establishing that both the finder of fact and the reviewing district court judges rejected her claim of compensability based on a complete absence of competent substantial evidence in the record. Were the Court to review the district court's decision on the merits (which **Publix** suggests is not appropriate), it would **find** that more than ample evidence supports the district court's determination that the findings of the Judge were supported by competent substantial evidence.

A. The "dual purpose" exception to the going and coming rule requires a factual showing that a personal commute to work has a concurrent "business" purpose.

The going and coming rule which bars compensation for injuries sustained while commuting to or from work is codified in section **440.092(2),** Fla. Stat. (1995). That section provides that an injury suffered "while going to or coming from work" is not an injury arising out of and in the course of employment? Put another way, injuries sustained while commuting to or from work are not compensable because the travel is personal and does not arise in the course and scope of employment. E.g., ***Securex, Inc.*** v. ***Couto,*** 627 So. 2d 595 (Fla. 1st DCA 1993). A recognized exception to the going and coming rule, though, is the dual purpose doctrine of Cook — that a trip otherwise personal in nature will be compensable if it was undertaken for a concurrent business purpose.

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[7] The statute goes on to create an exception for a "special errand or mission for the employer, " but that ground for claiming compensation is one of several raised below which has now been abandoned. Ms. Gilbert's complex analysis and discussion of the statutory terms "errand" and "mission" (Initial Brief at 29-32) adds no new appellate issue, as it collapses in the final analysis into her "dual purpose" argument based on ***Nikko*** and ***Cook. Id.*** at 32.

Any determination regarding the going and coming rule is factually intensive, and appellate review of a going and coming determination is governed by the standard of whether there is any substantial competent evidence to support the decision of the finder of fact. E.g., ***Krause v. West Lumber Co,, 227 So.*** 2d 486, 487 (Fla. 1969); ***Eady v. Medical Personnel Pool, 377 So.*** 2d 693, 696 (Fla. ***1979); Tampa Airport Hilton Hotel v. Hawkins, 557 So.*** 2d 953, 954 (Fla. 1 st DCA 1990). The fact-finder in this case who conducted evidentiary hearings before twice rejecting Ms. Gilbert's claim, as well as the district court, found ample record evidence for a determination of non-compensability.

Ms. Gilbert's normal work schedule dictated that she open her store at 4:00 a.m. on the days she had that responsibility, one of which at her own request was the day of the accident. Vol. XII at 22 16-17. At the time of her accident, Ms. Gilbert was going to her regular place of work over the route she normally traversed. Vol. I at 77; Vol. XII at 2218. An accident under these circumstances would be non-compensable under section 440.092(2) unless Ms. Gilbert was driving with a concurrent ***business*** purpose for the journey.

Her claim for compensation here depends on a showing that there is ***no*** competent substantial evidence in the record to the effect that the presence of the store newsletter in her car on the Thursday morning of the accident was happenstance, completely incidental to her commute. The presence of any competent evidence that the newsletter was ***not*** for a business purpose, but rather for her personal convenience, defeats her attempt to vacate the non-compensability finding of the Judge and its affirmance by the district court.

Ms, Gilbert pins her claim for compensation on a contention that her job ***required the*** preparation of a store newsletter at her home on Wednesday nights, and that her job ***required*** her to have the newsletter available for distribution with employee paychecks at 8:00 a.m. on Thursday morning. Despite her ardent

assertions of allegedly unrefuted evidence on these points, and her contention that from "a factual standpoint" the district court "misinterpreted the facts in this case" (Initial Brief at **19),** there is competent substantial evidence to the contrary.

B. Competent substantial evidence in the record supports the finding of the Judge, which the district court affirmed, that Ms. Gilbert's transport of the store newsletter at the time of her accident was not in furtherance of a "business" purpose.

Ms. Gilbert first disputes the district court's determination that she prepared the newsletter at her home for her own convenience, contending that two witnesses testified she completed the newsletter at home "because there was no typewriter in the store." Initial Brief at 19. The record, however, establishes that there was a ***computer*** in the store, that it was available for her use in preparing the newsletter, and that on occasion she had in fact used it for that purpose. Vol. II at 282-83, 361, 385, 386. The absence of a "typewriter" at the store did not require her preparation of the newsletter at her home.

Ms. Gilbert disputes the district court's statement that her transport of the newsletter in her car was merely an incidental part of the trip, contending that "the newsletter had to be brought into the store each Thursday morning before 8:00 a.m. so that it could be delivered with the paychecks. **"** Initial Brief at 19-20. Here, too, the record indicates otherwise. Ms. Gilbert was not under a duty to deliver the newsletter to the store on ***any*** Thursday, much less one on which she was not working, Vol, II at 363, 364. Paychecks were not withheld from employees if the store newsletter was not completed in time for delivery with those checks. Vol. II at 278 (Assistant Store Manager Seithel), 374 (Store Manager Curry); Vol. III at 408 (employee subsequently responsible for the

newsletter). The store newsletter was ***not*** an indispensable part of the business of Publix Store No. 427.[8]

Ms. Gilbert next disputes the district court's determination that she would not have made the drive on the morning of her accident if she were otherwise not going to work that day. Initial Brief at 20. The record, however, does not support her assertion. Store employees testified that Ms. Gilbert would generally bring the letter in before her work schedule on Thursdays. Vol. II at 266. Unlike the situation in ***Nikko,*** however, where Mr. Gulliford either brought the operating cash to his work place every day as an assigned responsibility or arranged for someone else to do so, Ms, Gilbert was not required to bring the newsletter to her place of work or to arrange for someone else to bring it in, and there is no evidence that she ever made arrangements for someone else to do so when she could not.

Ms. Gilbert had asked the Judge for an ***inference*** that she would have delivered the newsletter to the store on the day of her accident irrespective of her obligation to open the store that day. The record does not support that inference (Vol. II at 28 1-82), and it was properly rejected. Vol. XII at 2220.[9]

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[8] Ms. Gilbert had been an employee of Publix for approximately 16 years. Vol. I at 54. The preparation of a newsletter for her store commenced only two and one-half months before her accident. Vol. II at 262, 353-54.

[9] Ms. Gilbert did not prevail before the Judge of Compensation Claims, Consequently, she is not entitled to ***any*** inference from the record, and Publix is entitled to ***all*** reasonable inferences. E.g., ***Bass v. General Motors*** Corp., 637 So. 2d 304, 306 (Fla. 1st DCA 1994) ("a JCC's findings are to be sustained if it is permitted by any view of the evidence and its possible inferences").

The record contains compelling evidence from which the district court was able to conclude that the factual findings of the Judge should be sustained. The following evidence was supplied from Ms. Gilbert's supervisors at the Publix store where she worked.

1. Ms. Gilbert was expected to draft the newsletter ***at the store,*** not at home, and to leave it at the store on Wednesday if she was not scheduled to work on Thursday. Vol. II at 355, 357, 364.

2. Ms. Gilbert was not expected to bring the newsletter to the store on her days off. Vol. II at 363-64.

3. It was entirely Ms. Gilbert's choice to work at home, rather than to use the store computer. Vol. II at 386-87.

4. Paychecks were distributed without the newsletter when it was not available. Vol. II at 278.

Needless to say, even if there were conflicting evidence on any of these points,[10] the decision of the district court would have to be sustained. The fact-finder in this case twice found that Ms. Gilbert's injuries were not compensable, and as the ***Cook*** decision re-affirmed a decision of the fact-finding body on the question of whether the injury occurred in the course of employment "would not be disturbed if the evidence and inferences reasonably deducible therefrom were sufficient to sustain such finding. " 82 So. 2d at 682.

Ms. Gilbert's attempt to present a factual foundation for compensation which aligns with the outcome of ***Nikko*** is a vain undertaking. There, as here, an

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[10] Ms. Gilbert's record citations for her positions include deposition testimony of managerial personnel from Publix Store No. 427 who testified at trial, and who explained or clarified that deposition testimony during cross-examination before the Judge of Compensation Claims.

employee was injured in an auto accident en route to work with an item in the car which related to the employer's activities. The similarity ends there, however, for Mr. Gulliford in ***the Nikko*** case was pursuing an indispensable business purpose when his commute to work was interrupted. Mr. Gulliford had the specific job responsibility, "in addition to [his] other routine duties, " to

> empty the cash drawers used by the employer's tour ticket sellers, lock the money in his car, and take the money home for the evening. . . . The next morning he would take the cash back to work so that the ticket sellers would have a ready supply of money on hand to make change for customers. The ticket sellers were unable to open for business until the money was brought in.

448 So. 2d at 1003. He established that he would have had to make the same trip to his business locale even if he had not intended to come to work for the day, or that he would have had to make alternate arrangements so that the business could function. ***Id.*** at 1004. He was paid a monthly auto allowance in part for protecting the tour company's cash overnight, as an "essential" feature of his job. ***Id.***

Ms, Gilbert's preparation of the store's one-page newsletter at home, for her convenience, was not a required responsibility of her job so far as Publix was concerned, and Publix did not require her to deliver the newsletter when it was prepared at home. Ms. Gilbert received no compensation for transporting the newsletter to and from work (although she was paid for the time she spend typing it at home). Neither the business of Publix nor its payment of employees on Thursday mornings was dependent on the availability of a newsletter for distribution with the paychecks.

If Ms. Gilbert's situation has any parallel in the law, it most nearly resembles ***D.C. Moore & Sons v. Wadkins, 568 So.*** 2d 998, 999 (Fla. 1st DCA 1990). In that case, an employee's trip home to get keys that should have

remained at the job site was held not to have been necessitated by any work-related request of the employer, but rather by the employee's purely personal mission to retrieve job-related paraphernalia which never should have left the employer's premises in the first place. If there is any doctrine or policy that can be identified with Ms. Gilbert's situation, it is the one that concerned the Court in ***United States Fidelity and Guaranty Co.*** v. ***Rowe, supra.*** There, addressing the incidental possession of business funds by an employee injured on her way home from work, the Court cautioned:

> If there can be recovery under the facts of this case, then there could be recovery in the case of any employee who carried about with him 'any of the paraphernalia' of his employment, and who sustained an injury while absent for any reason from his work.

126 So. 2d at 738,

CONCLUSION

The overnight possession of work-related materials as a matter of personal convenience, when the performance of work associated with those materials can (and by the employer's direction should) be done at the workplace, does not create the potential for application of the dual purpose exception to the going and coming rule of non-compensability. Ms. Gilbert's claim was non-compensable, and the district court's affirmation of the factual finding of the Judge to that effect presents no decisional conflict which would warrant the Court's intercession.

Publix Supermarkets and Care Administrators Services respectfully request that the Court deny review as having been improvidently granted, or in the alternative affirm the district court's decision.

Respectfully submitted,

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Appendix

Caroline GILBERT, Appellant,
v.
PUBLIX SUPERMARKETS and Care Administrators Services, Appellees.

No. 97-1573

District Court of Appeal of Florida,
First District.

Dec. 28, 1998.

Rehearing Denied Jan. 28, 1999.

Claimant appealed decision of Joseph E. Willis, Judge of Compensation Claims (JCC), denying benefits. The District Court of Appeal held that fact that claimant had completed preparation of employer's newsletter at home and that newsletter was present in her automobile did not render her injuries resulting from automobile accident compensable.

Affirmed.

WORKERS' COMPENSATION ⚖726
413k726
That workers' compensation claimant had completed preparation of employer's newsletter at home, and that newsletter was present in her automobile at time of accident, did not render her injuries compensable under going and coming rule; claimant prepared newsletter at home for her own convenience, it was not necessary that newsletter be brought to work on that particular morning, and purpose of claimant's commute was to open store.

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PER CURIAM.

Caroline Gilbert, the claimant and a former assistant manager for the employer-appellee, Publix Supermarkets, appeals an order of the Judge of Compensation Claims denying compensability for the injuries she sustained in an automobile accident which occurred at approximately 3:45 a.m. on January 26, 1995, en route from her home to her place of employment at Publix. We affirm on all issues, but write briefly to address the compensability question.

Although claimant had completed preparation of a newsletter for Publix at home before embarking on her journey to work, and the newsletter was present in her car at the time of the accident, these facts are not sufficient to compel compensability of her injuries. Competent, substantial evidence in the record supports the finding that claimant prepared the newsletter at home for her own convenience. This fact was not sufficient to constitute her home a second job site. Thus, it cannot be said that she was injured while traveling between two employment premises and was thereby excepted from the going and coming rule. See Santa Rosa Junior College v. Workers' Compensation Appeals Bd., 40 Cal.3d 345, 220 Cal.Rptr. 94, 708 P.2d 673 (Cal.1985). Similarly, although preparation of the newsletter was an employment duty, it was not necessary that the newsletter be brought to work the morning of January 26, 1995. The purpose of claimant's commute early that morning was to carry out her responsibilities relating to opening the store at 4:00 a.m. Her delivery of the newsletter was merely an incidental part of the trip. She would not have made the drive if the personal motive (going to work) was removed. Swartz v. McDonald's Corporation, 726 So.2d 783, 1998 WL 821772, 23 *1223 Fla. L. Weekly D2521 (Fla. 1st DCA, November 12, 1998).

AFFIRMED.

BENTON, VAN NORTWICK and PADOVANO, JJ., CONCUR.

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Appendix

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