Case: *Joseph J. Bielski, II vs. Norcon, Inc. and CH2M Hill Energy, Ltd.*, Alaska Workers' Comp. App. Comm'n Dec. No. 172 (November 30, 2012)

Facts: Joseph J. Bielski, II (Bielski) was injured in a motor vehicle accident on the way home from his job as an apprentice electrician for Norcon, Inc. (Norcon) on April 28, 2011. Norcon controverted benefits on the basis that Bielski's injuries were not work-related. On the day of the accident, Bielski was pulling a borrowed trailer loaded with Norcon's telephone poles using his personal vehicle. He hit a frost heave and the weight of the poles led to the vehicle jack-knifing and rolling over. With Norcon's permission and help with loading, Bielski was taking the poles home to use as light poles in his yard. Bielski's union contract provided for employees with job sites located 100 miles or more from their homes or the union hall, with either room-and-board nearby or a per diem compensation rate. Bielski chose the per diem rate and commuted daily between his job site and his home.

Bielski argued that the remote site doctrine, the special errand exception, or his contract terms applied and rendered his injuries work-related.

Applicable law: AS 23.30.010(a) provides in relevant part: "[C]ompensation or benefits are payable under this chapter for disability . . . or the need for medical treatment of an employee if the disability . . . or the employee's need for medical treatment arose out of and in the course of employment." The Alaska Supreme Court has applied a general rule that "injuries occurring off the employer's premises while the employee is going to or coming from work do not arise in the course of his employment." *R.C.A. Serv. Co. v. Liggett*, 394 P.2d 675, 677-78 (Alaska 1964). Two of the exceptions to this rule are: 1) the remote site exception, and 2) the special errand exception.

An injury arises out of and in the course of employment if it occurs "during (1) 'employer-required or supplied travel to and from a remote job site'; (2) 'activities performed at the direction or under the control of the employer'; or (3) 'employer-sanctioned activities at employer-provided facilities.'" "The crux of this doctrine is that everyday activities that are normally considered non-work-related are deemed a part of a remote site employee's job for workers' compensation purposes because the requirement of living at the remote site limits the employee's activity choices." *Doyon Universal Servs. v. Allen*, 999 P.2d 764, 768-69 (Alaska 2000).

The overarching consideration is "whose interest is being served by the trip when determining if an employee is engaged in a special errand." Among the criteria are: 1) whether the employer had immediate need of the employee's services; 2) whether the employee was required to travel because living quarters were not available near the worksite; 3) whether the employee was selected for the job because of his proximity to the worksite; and 4) whether the employer furnished transportation or reimbursed the employee for providing his own transportation.

Issues: Did the board correctly conclude the remote site doctrine did not apply? Did the board correctly conclude that the special errand exception did not apply? Did the board correctly conclude that Bielski's contract terms did not render the injuries work-related?

Holding / analysis: The remote site doctrine did not apply. Norcon did not require or supply the travel to and from a remote worksite. Bielski drove himself and Norcon's subsidizing the travel by paying Bielski additional compensation was not the same as supplying the travel. Moreover, Norcon did not require him to travel; Bielski could choose to stay at the Steakhouse in Fort Greely at Norcon's expense, use the additional compensation to stay elsewhere, or drive home. Fort Greely was not a remote site, one where the all-encompassing nature of the site made it impossible for Bielski to leave his work on a purely personal matter and thereby remove himself from work-connected coverage. "Here, not only was it possible for Bielski to leave Fort Greely on workdays, he *did* leave to return to his home in North Pole. Moreover, he was not subjected to the conditions which ordinarily exist at an isolated, remote site. Bielski was not required to do all his eating, sleeping, etc., at the worksite." Dec. No. 172 at 13.

The special errand exception did not apply.

> First, Norcon had no need for Bielski to transport the telephone poles from the worksite. Second, Bielski was not *required* to travel to and from the worksite; he could avail himself of local accommodation. Third, Norcon did not select Bielski for the job at Fort Greely because he lived in proximity to the project. Fourth, Bielski's subjective belief that he was serving Norcon by transporting the telephone poles away from the worksite in no way transcends the actual fact that the poles were not Norcon's and it did not benefit from their removal from the worksite. *Id.* at 14.

Finally, although Norcon did compensate Bielski for the time he spent making the drive back and forth between North Pole and Fort Greely, he was not compensated because he was transporting the telephone poles. Instead, "[h]is compensation would not have been any less had Bielski driven home . . . on April 28, 2011, without the . . . poles." *Id.* at 15.

The commission rejected that the contract terms rendered the injuries work-related.

> In the case of the employee who receives mileage, the purposes of the additional compensation are 1) to defray the employee's travel expenses, and 2) to compensate the employee for the inordinate amount of time required to travel to and from the jobsite. The purposes of additional compensation at the enhanced hourly rate are the same, although the time and expense of actual travel are alleviated for those employees who opt to use local accommodation. Given the purposes . . . , no matter the form in which it is paid, in our view, it is problematic to conclude that it somehow converts travel to and from the jobsite into a compensable event. The payment of compensation for travel, in and of itself, does not supply the requisite nexus between travel and employment so as to bring the travel within workers' compensation coverage. *Id.* at 16.