STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM T. PFEIL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 01-0053
	)	
DEPARTMENT OF LAW ENFORCEMENT,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, a hearing was held in this cause on February 27, 2001, before Don W. Davis, Administrative Law Judge with the Division of Administrative Hearings (DOAH), in Tallahassee, Florida. The following appearances were entered:

For Petitioner: Thomas A. Klein, Esquire
Florida Police Benevolent
Association, Inc.
300 East Brevard Street
Tallahassee, Florida 32301

For Respondent: D. David Sessions, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

At issue is whether Petitioner was within the scope of his employment, and therefore not personally liable for damages sustained by the state-owned vehicle driven by him at the time of a traffic accident.

PRELIMINARY STATEMENT

On June 14, 2000, Respondent Florida Department of Law Enforcement (FDLE) delivered a written reprimand to Petitioner. Petitioner was reprimanded for safety violations committed by him which resulted in a traffic accident on March 8, 2000.

In addition to the reprimand, the written communiqué to Petitioner also included a directive that Petitioner arrange for repayment to FDLE for damage suffered to FDLE's vehicle while being operated by Petitioner. The reason for the reimbursement directive, as written by Director Dennis Wilson, was that the Florida Department of Insurance, Division of Risk Management (RISK), had determined that Petitioner was not within the scope of his employment at the time of the accident. Consequently, RISK had determined that state payment for damage repair to the state owned vehicle, was not possible.

On or about June 22, 2000, Petitioner filed a Petition for Administrative Hearing with FDLE and with RISK. RISK summarily denied Petitioner's request for hearing.

FDLE honored Petitioner's request and on or about January 4, 2001, requested assignment of an Administrative Law Judge to conduct formal administrative proceedings in the case.

At the final hearing, Petitioner presented testimony of six witnesses and 13 exhibits. FDLE presented the testimony of one witness and four exhibits.

The parties did not order a transcript of the proceedings. After the hearing, the parties were granted leave to file proposed recommended orders more than 10 days following the final hearing.

Both parties submitted proposed recommended orders, which have been reviewed and utilized in the preparation of this recommended order.

FINDINGS OF FACT

1. On or about March 8, 2000, Petitioner had an automobile accident, while driving his state-owned vehicle. Petitioner received administrative discipline from FDLE, his employer, for his role in the accident. Specifically, Petitioner received a written reprimand for safety violations committed by him in the operation of the state-owned vehicle.

2. Additionally, Petitioner was ordered to reimburse FDLE for the repair of damage sustained by the automobile. At the time, FDLE had no administrative rule, which gave notice to Petitioner or required him to pay for the vehicle's damage. Instead, FDLE exclusively relied upon the opinion of Risk in determining that the accident took place while Petitioner was

"on a personal mission" of his own and was, therefore, not within the scope of his employment.

3. At all times material to this case, Petitioner was a special agent of FDLE, assigned to the agency's Live Oak, Florida, office.

4. As part of his employment by FDLE, Petitioner was assigned a state-owned vehicle to operate.

5. Petitioner resides with his family in Madison, Florida.

6. On the date of the traffic crash, Petitioner was working on an ongoing criminal investigation in conjunction with the Hamilton County Sheriff’s Office (HCSO) in Jasper, Florida.

7. On the morning of March 8, 2000, Petitioner drove his state vehicle directly to HCSO from his residence.

8. In the afternoon of March 8, 2000, Petitioner received a call at HCSO originating from his wife which notified him that his father had been taken to the Madison County hospital due to a heart attack. Petitioner then informed his wife of his intent to drive the state vehicle back to their personal residence, so that he could retrieve his personal vehicle for the trip to Madison County Hospital.

9. Following the conversation with his wife, Petitioner left HCSO in the state vehicle and shortly thereafter became

involved in the automobile accident. Petitioner informed HCSO Investigator David Ehlert, after the latter had arrived at the accident scene, that he was in the course of driving the state vehicle to his personal residence, so that he could retrieve his personal vehicle for the trip to the Madison County Hospital.

10. Just prior to the accident, Petitioner activated his vehicle’s emergency lights and siren for which he later received a reprimand for breach of safety conditions attendant to driving his "Class C" vehicle. The automobile accident caused damage to the state vehicle estimated at approximately $8,325.00.

11. When Petitioner’s state vehicle is not in use it is routinely parked at his personal residence, as authorized by FDLE policy.

12. Petitioner has been authorized to use this "Class C" vehicle for state business purposes only, which includes "incidental use" in "limited situations."

13. Petitioner and other FDLE agents, who have been issued "Class C" vehicles are routinely subject to service calls on a 24-hour basis, requiring that they respond directly from their personal residences. Additionally, these same agents serve routinely as "duty agents" after their regularly scheduled work hours.

14. On the date of the accident, Petitioner drove along State Road 6, which is the most direct travel route between his personal residence and HCSO. Further, on this date, Petitioner neither "departed from his usual route" nor employed the vehicle for "incidental use." Instead, on March 8, 2000, Petitioner was operating the vehicle while "on duty" and was paid by FDLE for performing this task within his regularly scheduled work hours.

15. Petitioner's intent to retrieve his personal vehicle before going to the Madison County Hospital was based on his father’s past history of heart-related hospitalization and the likelihood that the patient would be transferred to a larger hospital in either Tallahassee or Jacksonville. Such a journey would have required Petitioner to use his personal vehicle.

16. Petitioner’s personal residence is located approximately one-fourth mile from the intersection of U.S. 90 and State Road 6. This very short distance would have permitted Petitioner to retrieve his personal vehicle in a matter of moments. Additionally, it was the same route traveled by Petitioner that morning.

17. Conversely within the same time frame, Special Agent Don Ugliano, a fellow employee, had an automobile accident

involving his rear-ending of another automobile with his "Class C" vehicle but RISK paid that claim.

18. Shortly after Petitioner's accident, personnel of RISK sent Petitioner a RISK agency publication, which purported to explain the parameters of when RISK will and will not insure a state employee who has been involved in an automobile accident. Prior to this time, neither Petitioner nor any of his FDLE supervisors had seen the publication or had been advised by RISK of its coverage policies. The publication was sent to FDLE and Petitioner. It was RISK’s first issue of the publication.

19. RISK’s publication specifically provides that state insurance coverage is in effect "for an employee whose regular work time requires him to work away from the office (in the 'field')" such as "when commuting to and from work."

20. At all times material, Petitioner was operating the vehicle while "on duty" and "within the scope of his employment." The candid and direct testimony of Petitioner's supervisor and author of the directive requiring reimbursement for damages to the state vehicle, establishes that the demanded reimbursement was apart from the reprimand language included in the document and added by FDLE based exclusively upon RISK’s position. A new rule, addressing situations such as Petitioner’s, was in the course of development by FDLE on

the same date as the accident. However, that rule was technically "unadopted" at the time of the accident.

21. Prior to the accident, attempts by FDLE personnel, inclusive of Petitioner, were made to secure a private insurance "rider" coverage for those incidents, which RISK might not insure. The answer received in response to these inquiries was that no private carrier would agree to submit itself to the arbitrary and capricious coverage determinations of RISK.

CONCLUSIONS OF LAW

22. It is well-established principle of administrative law that a party, whose "substantial interests" have been affected by an "agency," has the right to a formal administrative hearing before the Division of Administrative Hearings (DOAH). McDonald v. Department of Banking and Finance, 346 So. 2d 569 (Fla. 1st DCA 1977). See also Sections 120.569 and 120.57, Florida Statutes.

23. Entitlement to a formal administrative hearing is not automatic but requires the existence of "disputed issues of material fact." McDonald, supra. The "affected" party must make an objective showing that the agency's proposed action will result in a party's substantial and immediate "injury-in-fact." Amalgamated Transit Union, Local 1267 v. Benevolent Association of Coachmen, Inc., 576 So. 2d 379 (Fla.

4th DCA 1991); United Health, Inc. v. Department of Health and Rehabilitative Services, 579 So. 2d 342 (Fla. 1st DCA 1991); Fairbanks Inc. v. State Department of Transportation, 635 So. 2d 58 (Fla. 1st DCA 1994) review denied 639 So. 2d 977.

24. An agency's demand for financial reimbursement meets the "substantial interest" test for purposes of affording an "affected" party the right to a formal administrative hearing. United Health, Inc. v. Department of Health and Rehabilitative Services, supra.

25. It is abundantly clear from the evidence, that Petitioner's "substantial (financial) interests" have been "affected" by FDLE's affirmative demand that he reimburse the agency $8.325.00. It is likewise abundantly clear from the evidence that Petitioner's "substantial (financial) interests" have been "affected" by RISK's communication to FDLE withdrawing state insurance coverage for the accident. Petitioner has been substantially affected, is entitled to a DOAH hearing, and DOAH has jurisdiction of this cause.

26. The "disputed material facts" in this case are whether Petitioner's accident took place "within the scope of his employment" and whether Petitioner's return trip was a "distinct departure for a non-essential personal errand."

27. Additionally, Section 120.57(1)(e)1, Florida Statutes, provides in pertinent part that, "Any agency action

that determines the substantial interests of a party and that is based on an unadopted rule is subject to de novo review by an administrative law judge."

28. FDLE has admitted that a new rule addressing Petitioner's circumstances was technically "unadopted" at the time and was subsequently applied to Petitioner.

29. The Administrative Procedure Act (APA) requires that agencies give affected parties a "clear point of entry" into administrative proceedings to contest an agency's actions. Mansota-88, Inc. v. State Department of Environmental Regulation, 417 So. 2d 846 (Fla. 1st DCA 1982).

30. On June 14, 2000, when FDLE issued Petitioner a memorandum of written reprimand with the additional provision that he make arrangements to reimburse the agency no later than August 1, 2000, no point of entry was given. Petitioner was not informed of his right to a hearing. However, on June 22, 2000, Petitioner filed a petition requesting a formal hearing with both RISK and FDLE. FDLE correctly applied an objective review and granted Petitioner access to administrative proceedings. RISK's summary denial of an administrative hearing to Petitioner has no effect on these proceedings.

31. FDLE made no objective showing of the absence of disputed issues of material fact. Additionally, the weight of

the evidence presented shows entitlement by Petitioner to the relief requested.

32. Section 768.28(9)(a), Florida Statutes, states in pertinent part that:

> No officer, employee, or agent of the state . . . shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event or omission of action in the scope of her or his employment, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property. . . . The state . . . shall not be held liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment . . . (Emphasis supplied)

33. The term "within the scope of employment" is a statutory term of art, which is commonly employed in deciding tort and workman's compensation claims. See Chapters 440 and 768, Florida Statutes. Whether an employee was "within the scope of his employment" when an accident took place is a factual determination, to be decided by the trier of fact. Gardner v. Holifield, 639 So. 2d. 652 (Fla. 1st DCA 1994).

34. An injury resultant from an automobile accident was considered to have taken place "within the scope of employment" if an employee's job requires travel to and from various locations within a certain geographic area to perform necessary job duties, which are essential to his employment

activity. Florida Hospital v. Garabedian, 765 So. 2d 987 (Fla. 1st DCA 2000).

35. Most importantly to the case at bar, an injury received by a full-time law enforcement officer, when his unmarked police vehicle became involved in an accident as he was driving it home for lunch, was considered to have taken place "within the scope of employment." Klyse v. City of Largo, 765 So. 2d 270 (Fla. 1st DCA 2000).

36. Similar to Petitioner, Investigator Klyse had been issued a government-owned vehicle and was by agency policy "on-duty" at the time of the accident. Like Petitioner, Klyse was authorized to drive the vehicle to and from his personal residence and he was subject to being "called out" even when on lunch break. In overturning the findings of the claims judge, the Court specifically recognized the uniqueness of law enforcement employment, which requires full-time officers to be subject to call and to carry identification, weapons, and radio within his normal working hours.

37. It is undisputed that Petitioner made the trip to HCSO to perform necessary job duties, which were essential to his employment; namely, to conduct an investigative interview. There is likewise no factual dispute that at the time of the accident he was by FDLE policy, "on-duty," within his normal working hours and was paid for the time he was in route to

home. Petitioner was required to carry his identification, weapons, and radio, and was subject to being "on-call" 24 hours a day.

38. The facts in this case demonstrate that Petitioner's roundtrip travel to and from HCSO, on the most direct route, was essential to the business of his employer. To find otherwise would create a chilling effect on the ability of law enforcement officers to provide an immediate response when called. Additionally, the absurdity of concluding that that Petitioner should have left his "Class C" vehicle in Jasper, when he received the personal call about his father is self-evident.

RECOMMENDATION

Based upon the foregoing analysis, findings of fact and conclusions of law, FDLE has no basis in fact or in law to demand reimbursement from Petitioner.

It is recommended that FDLE enter a final order finding Petitioner to have been in the course of employment at the time of the traffic accident in question and rescinding FDLE attempts to seek reimbursement from Petitioner for damage to the state-owned vehicle.

DONE AND ENTERED this 27th day of March, 2001, in Tallahassee, Leon County, Florida.

_____
DON W. DAVIS
Administrative Law Judge
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Filed with the Clerk of the
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this 27th day of March, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.