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ATTORNEY FOR APPELLANT:

MICHAEL A. SCHOENING
Nation Schoening Moll, P.C.
Fortville, Indiana

ATTORNEY FOR APPELLEE:

JOHN H. SHEAN
Shean Law Offices
Bloomington, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BLOOMINGTON FORD, INC.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 93A02-0904-EX-290
	)	
ROBERT McARDLE,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Case No. C-179434

August 31, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Bloomington Ford, Inc. (Bloomington Ford), appeals the Worker's Compensation Board's decision affirming its administrative law judge's decision awarding Appellee-Plaintiff, Robert McArdle (McArdle), $6,058 for the amputation of the tip of his middle finger, which occurred while he was employed by Bloomington Ford.

We affirm and remand.

ISSUE

Bloomington Ford raises one issue for review, which we restate as: Whether McArdle's injury arose out of and in the course of his employment with Bloomington Ford.

FACTS AND PROCEDURAL HISTORY

On July 18, 2006, McArdle was employed by Bloomington Ford as a commercial truck manager. His job duties consisted of developing a base of fleet accounts, selling both cars and trucks. He had been employed with Bloomington Ford for eleven years. That day, McArdle went into the service area to check on a van of a customer. He had been in the service area numerous times before. While in the service area, he noticed an exotic or high-end vehicle that was being worked on. Out of curiosity, he approached the vehicle and attempted touch the brake rotor to see if the coloration on the rotor was paint or some other material. While doing so, he inadvertently rotated the wheel and the tip of his middle finger was amputated by a moving part.

McArdle reported the injury to Bloomington Ford and timely filed a worker's compensation claim. On February 12, 2007, an administrative law judge held a hearing on

the limited issue of whether McArdle's injury resulted from an accident arising out of and in the course and scope of his employment with Bloomington Ford. On March 14, 2007, the administrative law judge entered its findings in favor of McArdle. On March 30, 2007, Bloomington Ford filed a petition for review with the full Worker's Compensation Board (Board). The full Board issued a decision on May 3, 2007, indicating that the matter was not ripe for review. On November 8, 2007, Bloomington Ford and McArdle submitted stipulated facts, issues, and exhibits as to remaining issues. On November 27, 2007, the administrative law judge entered its order awarding benefits and compensation to McArdle. On December 18, 2007, Bloomington again filed a petition for review with the full Board. On March 9, 2009, the full Board adopted the administrative law judge's order.

Bloomington Ford now appeals. Additional facts will be provided as necessary.

DICUSSION AND DECISION

Bloomington Ford contends that the evidence presented did not support the Board's conclusion. Specifically, Bloomington Ford contends that McArdle's accident did not occur in the course of employment because he was not employed to work on the car which he was inspecting at the time of the accident.

Indiana Code section 22-3-4-8(b) provides that "An award by the full board shall be conclusive and binding as to all questions of the fact, but either party to the dispute may, within thirty (30) days from the date of such award, appeal to the court of appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions." Our standard of review in worker's compensation cases provides that we give deference to the

Board's findings. *Stytle v. Angola Die Casting Co.*, 783 N.E.2d 316, 319 (Ind. Ct. App. 2003). "In particular, the appellate court is bound by the Board's factual determinations and may not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion." *Id.* We will not reweigh the evidence or assess the credibility of witnesses on appeal. *Id.* However, where the facts relating to the question of liability are undisputed, the issue is a question of law for courts to decide. *Lowell Health Care Center v. Jordan*, 641 N.E.2d 675, 677 (Ind. Ct. App. 1994), *trans. denied*. "If the evidence is without conflict, the appellate court will reverse the Board's decision if reasonable persons would be bound to reach the opposite conclusion from the evidence in the record." *Id.*

"In order for an injury to be compensable, it must arise both 'out of' and 'in the course of' one's employment." *Slinkard v. Extruded Alloys*, 150 Ind. App. 479, 485, 277 N.E.2d 176, 180 (1971).

> [A]n accident occurs 'in the course of' the employment when it takes place within the period of the employment, at a place where the employee may reasonably be, and while he is fulfilling the duties of his employment, or is engaged in something incidental to it, while an accident 'arises out of' the employment where there is a causal connection between it and the performance of some service of the employment, and causal relation is established when the accident arises out of a risk, which a reasonably prudent person might comprehend as incidental to the employment at the time of entering into it, or the facts show an incidental connection between the conditions under which the employee works and the injury.

E.R. Burget Co. v. Zupin, 118 Ind. App. 644, 648-49, 82 N.E.2d 897, 899 (1948).

Bloomington Ford directs our attention to *Construction Management and Design, Inc. v. VanDerWeele*, 660 N.E.2d 1046 (Ind. Ct. App. 1996), *trans. denied*, to support its contention. In *VanDerWeele* the Worker's Compensation Board affirmed its administrative

law judge's decision that VanDerWeele's injury arose out of and in the course of his employment, but we reversed. *Id*. at 1048. VanDerWeele was a part of a four man crew that was working on a house. *Id*. They heard spinning tires outside and saw that a woman had slid her car off of the driveway on property adjacent to the house where they were working. *Id*. The crew members decided to assist the woman, but VanDerWeele slipped and fell while walking on the adjacent driveway, suffering an injury from the fall. *Id*. We concluded that:

> It is undisputed that VanDerWeele was not on his employer's job site when he fell, but instead had left the premises and was on adjacent private property. He was not traveling to or from work at the time he was injured, nor was he intending to do anything that can be accurately described as incidental to his employment when he was injured. We conclude that the facts of this case do not fit within any of the recognized exceptions to the requirement that the injury occur on the employer's premises in order to be compensable.

Id. at 1050. Further, we explained:

> The act was not an act which VanDerWeele could reasonably have been expected to perform as an employee of the Company, nor was it incidental to his working on that site. We discern no connection between VanDerWeele's employment and helping the stranded motorist sufficient to support the conclusion that such an act could reasonably be characterized as having been in the course of VanDerWeele's employment.

Id. at 1050-51.

We find *VanDerWeele* to be distinguishable from the facts before us. Here, it is undisputed that McArdle was at work during regular work hours, and had permission to be in the service area. Originally, he went into the service area to check on a customer's van. The customer was not happy with the performance of the van, and McArdle was exploring the idea of the customer trading it in. He was checking the van in attempt to determine its value as a trade in. After inspecting the van he then went over to inspect the exotic car out of

curiosity. McArdle testified that he was "a car salesman, as well as a truck salesman." (Tr. p. 12). Bloomington Ford sells only new Ford vehicles, but sells all makes and models on its used car lot. The car that McArdle was inspecting when he was injured could have been a car that Bloomington Ford would sell on its used car lot.

The administrative law judge concluded that "[a] reasonable person would expect that a car salesman would have contact with and examine automobiles in the service area or on the lot." (Appellant's App. p. 17). "Furthermore, a curiosity and involvement with automobiles is consistent with quality job performance for a car salesman." (Appellant's App. p. 17). "Curiosity toward automobiles was an inherent part of the conditions of the Plaintiff's employment." (Appellant's p. 17). We agree with the administrative law judge, and for these reasons conclude that McArdle's act of inspecting the exotic car was incidental to his employment.

Finally, Indiana Code section 22-3-4-8(f) provides that "an award of the full board affirmed on appeal, by the employer, shall be increased thereby five (5%), and by order of the court may be increased ten percent (10%)." McArdle requests only that we increase the award by five percent; therefore, we need not consider whether a ten percent increase would be warranted. Thus, we remand with instructions that Bloomington Ford pay McArdle the $6,058.00 originally ordered by the administrative law judge and affirmed by the full

Worker's Compensation Board, plus five percent, or $302.90, for a total amount of $6,360.90.

CONCLUSION

Based on the foregoing, we conclude that McArdle's accident arose out of and in the course of his employment with Bloomington Ford. We therefore affirm the award of the Worker's Compensation Board on appeal and order that the award be increased by five percent.

Affirmed and remanded.

BAKER, C.J., and FRIEDLANDER, J., concur.