Bonkowski v. Oberg Industries, Inc.: the Third Circuit Defines What Constitutes an Overnight Stay at a Medical Facility Pursuant to the FMLA

by Ty Hyderally and Luis Hansen

In a matter of first impression in *Bonkowski v. Oberg Industries*, *Inc*.,[1] the Third Circuit recently considered what constitutes an employee's overnight stay at a hospital for purposes of protection under the Family Medical Leave Act ("FMLA"). In doing so, the court adopted a narrow rule that could significantly reduce the amount of employees that fall under the scope of the act.

Pursuant to the FMLA, "an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period" if that employee is unable to work "because of a serious health condition."[2] The act's statutory language and the Department of Labor ("DOL")'s FMLA regulations define "serious health condition" in two ways: "a serious health condition" is "an illness, injury, impairment or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider."[3] Regarding the first prong of this definition, the DOL regulations define "inpatient care" as an overnight stay in a hospital, hospice, or residential medical care facility[.]"[4]

Yet, neither the statutory text of the FMLA nor the DOL define the term "overnight stay." Faced with a peculiar set of facts, the Third Circuit defined the term by adopting a bright-line rule: "an overnight stay means a stay . . . for a substantial period of time from one calendar day to the next calendar day as measured by the individual's time of admission and his or her time of discharge."[5] Though the court explained that it did not have to define the term "substantial period of time" in order to resolve the matter presented before it, the court stated that "a minimum of eight hours would seem to be an appropriate period of time."[6] Consequently, the Third Circuit held that the employee in *Bonkowski*, who had spent almost 14 hours in the hospital, was not protected under the FMLA because he had been admitted and discharged on the same calendar day.

Case Background

The plaintiff-appellant in *Bonkowski*, Jeffery Bonkowski ("Bonkowski"), worked for Oberg Industries ("Oberg," the "employer") as a wirecut operator and machinist.[7] He had a number of health-related issues, including heart problems and diabetes.[8] On November 14th, 2011, during a meeting with his supervisors, he began to experience shortness of breath, chest pain, and dizziness.[9] His supervisors cut the meeting short and gave him permission to leave work.[10] He went home at 5:18 p.m., where he "unsuccessfully tried to slow down his heartbeat and catch his breath."[11] His wife took him to the hospital at approximately 11:00 p.m.[12]

Although Bonkowski arrived at the hospital before midnight on November 14th, he was not officially admitted as a patient until a few minutes after midnight, on November 15th.[13] He was discharged that same day after spending almost 14 hours in the hospital undergoing testing and receiving treatment.[14] Oberg fired Bonkowski on November 16th because "he had walked off the job on November 14th[.]"[15]

District Court Decision

Bonkowski brought FMLA retaliation and interference claims against his employer in the District Court for the Western District of Pennsylvania.[16] He asserted that he qualified for FMLA

protection pursuant to the first prong of the act's definition of a "serious health condition," because his illness required an overnight stay at the hospital.[17]

The district court, however, granted summary judgment in the employer's favor.[18] It held that Bonkowski did not have a "serious health condition" entitling him to protection under the FMLA because he did not satisfy the DOL's regulatory definition of "inpatient care" as "an overnight stay in a hospital, hospice, or residential medical facility."[19] In doing so, it largely relied on dictionary definitions of the words "overnight" and "night," since the DOL's regulations did not explain what constituted an "overnight stay." [20] As a result, the district court concluded that the term meant staying in a medical facility from sunset on one calendar day to sunrise on the next.[21] Thus, the court held that Bonkowski did not qualify for FMLA protection because Bonkowski arrived at the hospital sometime after 11 p.m. and was admitted shortly after midnight.[22]

The Majority's Holding and Reasoning

Bonkowski appealed to the Third Circuit. He argued that whether he had a "serious health condition" was a question of fact that should go to the jury[23] and that "a reasonable juror could find that he stayed overnight at a hospital[]" [. . .] "given the totality of the circumstances[.]"[24] On the other hand, Oberg argued that, even if the appellate court disagreed with the district court's sunset to sunrise definition, the appellate court should define "overnight stay" as a stay from one calendar-day to the next.[25] Thus, the Third Circuit was presented with three possible definitions of "overnight stay:" (1) the district court's sunset to sunrise definition, (2) Bonkowski's "totality of the circumstances" definition, and (3) Oberg's calendar day definition.[26] Though the court upheld the lower court's grant of summary judgment in Oberg's favor, it rejected the sunset to sunrise definition.[27] Instead, it adopted the employer's definition, but with the added caveat that the stay must be for a substantial amount of time.[28]

In its reasoning, the majority opinion first rejected the district court's sunset to sunrise rule as excessively narrow.[29] It explained that outcomes based on that standard varied too much depending on the time of year and geography, which could lead to odd or absurd results.[30] As an example, the majority compared the sunset and sunrise times in different parts of the country at the same time of the year.[31] It argued that a plaintiff in Alaska would only have to be hospitalized for a very short period of time in order to qualify for FMLA protection, while a plaintiff elsewhere in the country would have to be hospitalized for a much longer period.[32] The court also pointed out that the district court relied on incomplete definitions of the terms "overnight" and "night," and on an overly narrow reading of the DOL regulations.[33]

The court then rejected Bonkowski's "totality of the circumstances" definition because it was legally incorrect.[34] According to the majority, whether Bonkowski had a "serious health condition" depended on the lower court's interpretation of the FMLA. The court explained that such analysis is a question of law that must be addressed by a court, not a question of fact.[35] Though Bonkowski did not argue that the court could define "overnight stay" by establishing a multi-factor test, the majority opinion acknowledged that it had the authority to do so.[36] Still, the court rejected this approach because it "would make it more difficult for both employers and employees to predict

whether a specific set of circumstances rises to the level of an overnight stay . . . and lead to additional litigation and in the future with possibly inconsistent results."[37]

Instead, the majority adopted a "calendar day plus a substantial period of time" standard. It reasoned that this rule could be applied objectively and equally among different plaintiffs, could reduce the uncertainty and amount of litigation, and would be in keeping with the purpose of the FMLA[38] (since "an individual who was admitted and discharged by a hospital on the same day appears to have . . . a 'short term condition[] for which treatment and recovery are very brief . . . [and] would be covered by even the most modest of employer sick leave policies.'"[39]).

Bronkowski argued that this calendar-day standard would lead to the "absurd result" of excluding an employee from FMLA protection in situations when the employee arrives at the hospital early in the evening, but is formally admitted a minute after midnight on the next day.[40] In response, the majority relied on the Second Circuit's reasoning in *Landers v. Leavitt*, 545 F.3d 98 (2d Cir. 2009).[41] The *Landers* Court defined the term "inpatient," in the context of Medicare litigation[42], by excluding the time that patients spent in the ER. In reaching this holding, the Second Circuit deferred to the Centers for Medicare and Medicare Services ("CMS"), the federal agency in charge of Medicare, and how it defined inpatient.[43] According to the *Landers* Court, CMS did not believe that time spent in an emergency room prior to formal admission would, by itself, identify the severity of the individual's condition.[44] Thus, the *Landers* court held that a person becomes an inpatient when he or she is admitted to the hospital, not when that person arrives at the ER. The Third Circuit adopted this reasoning,[45] particularly persuaded by CMS's argument in *Landers* ("After all, the fact that an individual is sitting in an emergency or waiting room does not necessarily indicate that his or her condition constitutes more than a short-term medical problem that would generally be covered by the employer's sick leave policy.").[46]

Judge Fuentes's Dissent

The dissent argued that the majority's approach was "impractical, produce[d] inequitable results, and [was] contrary to the remedial purpose of the FMLA."[47] Seemingly unpersuaded by the majority's reliance on *Landers*, the dissent asserted that the majority's rule "truncate[ed] coverage and constru[ed] exceptions broadly."[48] Moreover, the dissent argued that the majority's bright line rule ignored the "multitude of factors impacting time of admission and the realities of our health care system."[49] In support, the dissent pointed to the fact that wait times at hospitals vary depending on geography, the type of medical insurance the employee has, if any, the time of day, week, or year when the employee seeks treatment, traffic on any given day, and the type of transportation an employee uses to get to the hospital.

The dissent proposed a multi-factor standard as an alternative. Some suggested factors included: (1) the time at which the sick employee is formally admitted to the hospital and time at which he or she is discharged; (2) whether part of the time the employee spends in the hospital is during the traditional night hours; (3) whether the employee was assignment to a room; (4) the severity of the medical issue presented; (5) whether extensive tests were conducted; and, (6) whether the hospital classified the employee as inpatient or outpatient.[50] According to the dissent, these factors would allow courts to consider a broad range of evidence in order to determine whether an employee is entitled to FMLA relief.[51] It also argued that the majority's concerns regarding applying a multi-factor standard (that it would lead to uncertainty in the law and an

increase in litigation) were overstated because there are "seldom matters of factual dispute" in these type of situations.[52]

Conclusion

The majority's rule in *Bronkowski* could have a significant effect on whether an employee's late night emergency room visit qualifies for FMLA leave. The Third Circuit's holding is clear: if a sick employee is admitted and discharged from the hospital on the same day, that employee did not have an overnight stay in a medical care facility. Thus, that employee would not qualify for FMLA protection pursuant to the first prong of the FMLA's definition of "serious health condition." Still, it is important to note that an employee might still be covered by the act under the second prong, which defines "serious health condition" as "an illness, injury, impairment or physical or mental condition that involves . . . (B) continuing treatment by a health care provider."

Ty Hyderally is the owner of Hyderally & Associates, P.C. Luis Hansen is an associate with the Firm. Their practice concentrates on Employment Law.

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[1] 2015 U.S. App. LEXIS 8492, at *1 (3d Cir. 2015)
[2] 29 U.S.C. §2612(a)(1)(D).
[3] *Id*. at § 2611(11); 29 C.F.R. §825.113(a).
[4] 29 C.F.R. § 825.114.
[5] *Bonkowski*, 2015 U.S. App. LEXIS 8492, at *21.
[6] *Id*. at *53.
[7] *Id*. at *2.
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*. at *2-*3.
[12] *Id*. at *3.
[13] *Id*.
[14] *Id*.
[15] *Id*. at *4.
[16] *See Id*. at *1; *id*. at *4.
[17] *Id*. at *5.
[18] *Id*.
[19] *Id*.
[20] *Id*. at *5-*6.
[21] *Id*. at *6.
[22] *Id*. at *6-*7.
[23] *Id*.
[24] *Id*.
[25] *Id*. at *20.
[26] *Id*.
[27] *Id*. at *2.
[28] *Id*. at *21.
[29] *Id*. at *25.
[30] *Id*. at *28.
[31] *Id*. at *26-*27.
[32] *Id*. at *27-*28.
[33] *Id*. at *23-*24.

[34] *Id*. at *30.
[35] *Id*. at *30-*31.
[36] *Id*. at *33 (citing *Haybarger v. Lawrence Cnty. Adult Prob. & Parole*, 667 F.3d 408, 418 (3d Cir. 2012)) ("a court could interpret a particular statutory or regulatory provision as establishing some sort of multi-factor standard under which the fact finder determines whether a particular set of circumstances meets this standard.")
[37] *Id*. at *35.
[38] *Id*. at *35-*36.
[39] *Id*. at *38.
[40] *Id*. at *40.
[41] *Id*.
[42] The *Bronkowski* majority argued that *Landers* was instructive for purpose of defining overnight stay, even though *Landers* was a Medicare case, because the Medicare and FMLA schemes both incorporate the same basic notion of inpatient care.
[43] *Id*. at *42.
[44] *Id*.
[45] In addition to relying on Landers, the majority justified its bright-line rule by stating that "even if [an employee] fail[s] under [the substantial health condition] prong, sick employees "may still be able to establish that the illness, injury, impairment, or physical condition at issue involves 'continuing treatment by a heath care provider' pursuant to 29 U.S.C. §2611(11)(B) and 29 C.F.R. §825.113 and 825.115."
[46] *Id*. at *45.
[47] *Id*. at *54.
[48] *Id*. at *56. ("Denying FMLA protection to an employee who enters the hospital one day and remains there much of the day, totaling close to nineteen hours, is, in effect, truncating coverage and construing exceptions broadly. This denial is simply inconsistent with the remedial purpose of the FMLA.").
[49] *Id*. at *57.
[50] *Id*. at *62-*63.
[51] *Id*. at *64.
[52] *Id*.