

08-17-2002 Pojoaque Pueblo NM – Kevin Schultz – Tribal LEO Off Duty River Rescue LAW SUIT



OFFICER DOWN MEMORIAL PAGE



REMEMBERING ALL OF LAW ENFORCEMENT'S HEROES

<http://www.odmp.org/officer/16570-police-officer-kevin-william-schultz>



Bio & Incident Details
Age: 44
Tour: 15 years
Badge # 5
Military veteran
Cause: Drowned
Location: New Mexico

Police Officer

Kevin William Schultz

Pojoaque Pueblo Tribal Police Department, Tribal Police

End of Watch: Saturday, August 17, 2002

Officer Kevin Schultz drowned after rescuing a boy who had been knocked unconscious in the Rio Grande River near Pilar, New Mexico.

Officer Schultz was on a fishing trip with his church's youth group when the incident occurred. Because of his actions the boy survived.

Officer Schultz had served in law enforcement for 15 years, and had previously served four years with the United States Navy and eight years with the United States Air Force. He is survived by his wife and son.

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Date: 06-23-2010

Case Style: Cheryl Schultz v. Pojoaque Tribal Police Department

Case Number: 2010-NMSC-034

Judge: Mae

Court: Supreme Court of New Mexico (Bernalillo County)

Plaintiff's Attorney: George Wright Weeth, Albuquerque, New Mexico for Petitioner

Defendant's Attorney: Richard J. Shane and Kristin J. Dalton, Riley & Shane, P.A., Albuquerque, New Mexico for Respondents.

Description: {1} Cheryl Schultz (Petitioner) filed a workersâ€™™ compensation complaint for medical benefits and survivor benefits on behalf of her deceased husband, Kevin Schultz (Worker). The Workersâ€™™ Compensation Judge (WCJ) denied Petitionerâ€™™s claims and Petitioner appealed. Four days before the filing deadline, Petitioner mailed her notice of appeal from Albuquerque to the Court of Appeals, but the notice of appeal was filed two days after the filing deadline. The WCJ granted Petitionerâ€™™s unopposed motion for an extension of time to file a notice of appeal. The Court of Appeals dismissed Petitionerâ€™™s appeal as untimely because the WCJ did not have authority to grant an extension of time, and there was no showing of excusable neglect or events beyond the control of Petitioner that would justify extending the time to file the appeal. We conclude that the WCJ did not have authority to grant an extension of time, but that Petitionerâ€™™s late filing was excusable in this case because it was due to a delay in the mail that was outside Petitionerâ€™™s control. Accordingly, we remand to the Court of Appeals to review the merits of Petitionerâ€™™s appeal.

I. FACTS AND PROCEDURAL HISTORY

{2} Worker was a police officer for the Pojoaque Tribal Police Department (Employer), which is insured by the New Mexico Mutual Casualty Group (Insurer). He drowned while rescuing a child who had fallen into the Rio Grande during an outing with a church group near Pilar, New Mexico.

{3} Petitioner filed a workersâ€™™ compensation complaint for medical benefits and survivor benefits against Employer and Insurer. The WCJ denied Petitionerâ€™™s claims on two grounds. First, the WCJ found that Petitionerâ€™™s claims were barred, because â€œ[t]he statute of limitations [had] run without reasonable excuse or because of misleading conduct on the part of Employer or Insurer.â€œ□ Second, the WCJ found that â€œWorkerâ€™™s accident did not arise out of his

employment with Employer; it was not within the course and scope of his employment, and was not caused by a risk incident to his employment.â€ The WCJ entered her final order denying Petitionerâ€™s claim on March 14, 2008. Accordingly, the deadline for filing a notice of appeal with the Court of Appeals was Monday, April 14, 2008. Rule 12- 601(B) NMRA (â€œDirect appeals from orders, decisions or actions of boards, commissions, administrative agencies or officials shall be taken by filing a notice of appeal with the appellate court clerk . . . within thirty (30) days from the date of the order, decision or action appealed from.â€); see also Rule 12-308(A) NMRA (â€œIn computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday . . . in which event the period runs until the end of the next day which is not one of the aforementioned days.â€).

{4} Petitioner mailed her notice of appeal from Albuquerque to the Court of Appealsâ€™s post office box in Santa Fe on April 10, 2008, via certified mail with the United States Postal Service (USPS). According to the USPS tracking report, on April 15, 2008, the Court of Appeals received a USPS notification card in its post office box indicating that the Court had received a package. The notice of appeal was delivered and filed in the clerkâ€™s office on April 16, 2008, two days after the filing deadline.

{5} On April 17, 2008, Petitioner filed an unopposed motion for an extension of time to file her notice of appeal with the WCJ. The WCJ granted Petitioner an extension of time to file the notice of appeal pursuant to Rule 12-201(E)(2) NMRA, which provides that the district court may extend the time for filing â€œupon a showing of excusable neglect or circumstances beyond the control of the appellant.â€ Petitioner then filed her Docketing Statement with the Court of Appeals on May 14, 2008.

{6} The Court of Appeals assigned the appeal to the summary calendar pursuant to Rule 12-210(D) NMRA and proposed summary dismissal, because the appeal was not filed in the Court of Appeals within the thirty-day time period and no enforceable extension was granted. The Court of Appeals concluded in its proposed disposition that the WCJâ€™s extension of time was not enforceable because â€œRule 12-601(C) clearly states that â€˜any request for extension of time must be made to the appellate court.â€™â€ In response, Petitioner argued that Rule 12-201(E)(2), which permits a district court to grant an extension of time to file a notice of appeal, also gave the WCJ authority to grant an extension of time. Alternatively, Petitioner argued that the Court of Appeals should exercise its discretion to grant the appeal, because â€œthe facts show [Petitionerâ€™s] reasonable diligence to file the appeal on time, and that the delay was caused by excusable neglect and factors beyond her control.â€

{7} In an unpublished memorandum opinion, the Court of Appeals concluded that it had â€œno sound basisâ€ on which to exercise jurisdiction over Petitionerâ€™s appeal. *Schultz v. Pojoaque Tribal Police Depâ€™t*, No. 28,508, slip op. at 9 (N.M.

Ct. App. Sep. 23, 2008). Addressing Petitioner's arguments, the Court first held that the appeal was not timely filed within thirty days as required by Rule 12-601(B). Id. at 3. Second, the Court held that the WCJ lacked authority to grant an extension of time to file under Rule 12-601(C). Id. at 3-4. Finally, the Court determined that "nothing in the record indicate[d] a showing of excusable neglect or events beyond the control of [Petitioner] that would justify extending the time to file the appeal." Id. at 7-8. The Court noted that Petitioner "could have personally filed the notice of appeal in the Albuquerque or Santa Fe offices and she could have requested an extension from the proper tribunal." Id. at 7. Therefore, the Court "dismiss[ed] for an untimely appeal." Id. at 9.

{8} We granted Petitioner's writ of certiorari pursuant to NMSA 1978, Section 34-5-14(B) (1972) and Rule 12-502 NMRA. *Schultz v. Pojoaque Tribal Police Dep't*, 2008- NMCERT-011, 145 N.M. 532, 202 P.3d 125.

II. DISCUSSION

A. Whether the WCJ Had Authority to Grant an Extension of Time to File a Notice of Appeal

{9} We first address whether the WCJ had authority to grant Petitioner's motion for an extension of time to file her notice of appeal. Within the Rules of Appellate Procedure, there are two sets of rules that address how appeals should be made to appellate courts. Rules 12-201 to 12-216 NMRA govern appeals from the district court and Rules 12-601 to 12-608 NMRA govern appeals from special proceedings, including proceedings before administrative agencies. Rule 12-601(C), which governs appeals taken from administrative agencies, states:

Whenever in these rules a duty is to be performed by, service is to be made upon, or reference is made to the district court or a judge or clerk of the district court, the board, commission, administrative agency or official whose action is appealed from shall be substituted for the district court or a judge or clerk of the district court, except that any request for extension of time must be made to the appellate court. (Emphasis added.) In contrast, Rule 12-201(E)(2), which governs appeals taken from the district court, states:

After the time has expired for filing a notice of appeal, upon a showing of excusable neglect or circumstances beyond the control of the appellant, the district court may extend the time for filing a notice of appeal by any party for a period not to exceed thirty (30) days from the expiration of time otherwise provided by this rule, but it shall be made upon motion and notice to all parties.

(Emphasis added.) Thus, whereas Rule 12-201(E)(2) gives the district court, as the lower tribunal, authority to extend the time for filing a notice of appeal, Rule 12-601(C) expressly divests the administrative agency of that authority and gives the Court of Appeals that authority.

{10} Petitioner argues that "the supreme court should take this opportunity to

eliminate the confusion created by Rule 12-601 and declare that workers' compensation benefits cases (where the legislature has provided a direct appeal to the court of appeals) will be decided under the same rules as appeals from district courts. To address Petitioner's claim, we must determine whether the appellate rules for the district courts or for administrative agencies apply to requests for extensions of time to file a notice of appeal challenging a decision made by the Workers' Compensation Administration (WCA). We review de novo the question of whether a lower court has authority to grant an extension of time for filing a notice of appeal. *Chavez v. U-Haul Co. of N.M.*, 1997-NMSC-051, ¶ 13, 124 N.M. 165, 947 P.2d 122. If authority exists, we uphold the extension absent an abuse of discretion. *Id.* ¶ 26.

{11} In support of her argument that the WCJ had authority pursuant to Rule 12-201(E)(2) to grant her an extension of time to file a notice of appeal, Petitioner relies on NMSA 1978, Section 52-5-8(B) (1989) of the Workers' Compensation Act, which provides that a decision by a WCJ is "reviewable by the court of appeals in the manner provided for other cases." Petitioner interprets this provision to mean that a WCJ decision should be governed by the district court rules, and thus Rule 12-201(E)(2) provides a WCJ, as the lower tribunal, authority to grant an extension of time to file a notice of appeal. Petitioner argues that applying Rule 12-601(C) to a WCJ decision is inconsistent with Section 52-5-8(B), and has been a recurring source of confusion for workers' compensation practitioners. See Rule 12-601 (providing that motions to extend must be made to the appellate court).

{12} We disagree. We have consistently applied the appellate rules contained in Rule 12-601 to the WCA. See, e.g., *Maples v. State*, 110 N.M. 34, 36, 791 P.2d 788, 790 (1990) ("Supreme Court Rule 12-601 is the controlling rule in appeals from Workers' Compensation actions."); *Singer v. Furr's, Inc.*, 111 N.M. 220, 221, 804 P.2d 411, 412 (Ct. App. 1990) (determining that the claimant in a workers' compensation case failed to comply with Rule 12-601(B)). Consequently, Petitioner was on notice that 12-601(C), which clearly states that "any request for extension of time must be made to the appellate court," was the controlling rule. Additionally, none of the cases upon which Petitioner relies addresses the issue raised in this case regarding the proper entity in which to file an extension of time for filing a notice of appeal. See, e.g., *Mieras v. Dyncorp*, 122 N.M. 401, 404, 925 P.2d 518, 521 (Ct. App. 1996) (holding that a notice of appeal filed in the correct tribunal but with the wrong caption was properly filed); *Brewster v. Cooley & Assocs.*, 116 N.M. 681, 684, 866 P.2d 409, 412 (Ct. App. 1993) (holding that Rule 12-601(B) only requires that an appellant serve the WCA with a copy of his notice of appeal to the Court of Appeals); *Tzortzis v. County of Los Alamos*, 108 N.M. 418, 773 P.2d 363 (Ct. App. 1989) (time limit for filing a notice of appeal runs from the date of the order pursuant to Rule 12-601(A), not mailing of that order as provided by statute).

{13} In her reply brief, Petitioner further argues that in *Bianco v. Horror One Productions*, 2009-NMSC-006, 145 N.M. 551, 202 P.3d 810, we decided that the procedure for taking appeals from a decision by a WCJ is exactly the same as

taking appeals from a district court judgment, and therefore a WCJ has authority to grant extensions of time to file a notice of appeal. Thus, Petitioner claims that Rule 12-201 applies to appeals from a WCJ decision and that the words “workers’ compensation judge” should take the place of “district court” throughout that rule.

{14} Petitioner construes *Bianco* too broadly, and ignores its underlying principle. In *Bianco* the issue was whether NMSA 1978, Section 39-1-1 (1953), which provides for retention of jurisdiction in the district court for a period of thirty days to rule on postjudgment motions, and Rule 12-201(B), which provides that the time for filing a notice of appeal does not begin to run until the express denial of such motions, apply to workers’ compensation cases. 2009-NMSC-006, ¶¶ 1,5. Because Rule 12-601 does not comment on the time for filing an appeal subsequent to a post-judgment motion under Section 39-1-1, we held that Rule 12-201(B) applies, and therefore the appellant’s notice of appeal was timely. *Bianco*, 2009-NMSC-006, ¶ 12. This application of Rule 12-201 is consistent with other workers’ compensation cases, holding that when rules governing appeals from the WCA have no provision on point, it is proper to look to the rules governing district courts for guidance. See *Maples*, 110 N.M. at 35-36, 791 P.2d at 789-90 (applying provisions from both Rule 12-201 and Rule 12-601 to a workers’ compensation case); see also *Rodriguez v. McAnally Enters.*, 117 N.M. 250, 252, 871 P.2d 14, 16 (Ct. App. 1994) (deciding that Rule 12-201(A), which specifically governs cross-appeals, was controlling when Rule 12-601 provided no provision that was directly on point). In the present case, however, Rule 12-201 and Rule 12-601 cannot be read harmoniously; therefore, we apply Rule 12-601, since it was specifically created to govern appeals from administrative agencies. See *Thompson v. Dehne*, 2009-NMCA-120, ¶ 16, 147 N.M. 283, 220 P.3d 1132 (stating that where two provisions cannot be harmonized, the specific section governs over the general (internal quotation marks and citation omitted)).

{15} Accordingly, we hold that pursuant to Rule 12-601, a WCJ lacks authority to grant extensions of time for notices of appeal.

B. Whether Petitioner’s Untimely Filing of Her Notice of Appeal Should Have Been Excused

{16} Petitioner argues that the New Mexico appellate courts should adopt a rule of substantial compliance, which would require the Court of Appeals to consider her notice of appeal on the merits, because she made substantial efforts to comply with the filing requirements. Petitioner mailed her notice of appeal four days prior to the deadline; however, it was not received by the Court of Appeals until two days after the deadline. She claims that receipt in Santa Fe from Albuquerque could reasonably be anticipated within three days and that various New Mexico rules support her argument. See Rules 1-006(D), 2-104(D), 3-104(D), 12-308(B) NMRA (providing “[a]dditional time after service by mail”). She therefore urges us to establish a rule of substantial compliance, under which a notice of appeal mailed at least three days prior to the filing deadline will automatically be granted. {17} The rules governing appeals from administrative agencies do not address whether a

three-day mailing rule applies to the filing of notices of appeal. Therefore, we look to the rules governing appeals from district courts for guidance. See supra Part II.A. Rule 12-201(A)(2) explicitly provides that “the three (3) day mailing period set forth in Paragraph B of Rule 12-308 NMRA does not apply to the time limits” for filing notices of appeal.

{18} We decline to adopt a rule of substantial compliance, because the appropriate inquiry for determining if a court can exercise its “discretion and entertain an appeal even though it is not timely filed” is whether “unusual circumstances beyond the control of the parties” are present. *Trujillo v. Serrano*, 117 N.M. 273, 278, 871 P.2d 369, 374 (1994). See also *Chavez*, 1997-NMSC-051, ¶ 22 (determining that though the district court’s extension of time was invalid, there were “unusual circumstances” that warranted excusing the late filing). In the present case, the Court of Appeals did not excuse Petitioner’s untimely filing of her notice of appeal, because “here [was] no evidence of judicial error under the facts of [Petitioner’s] appeal, and the late filing of the appeal was entirely under her control.” *Schultz*, No. 28,508, slip op. at 7.

{19} We review “a” court’s decision not to excuse a party’s failure to file a timely appeal . . . applying an abuse of discretion standard.” *Trujillo*, 117 N.M. at 276, 871 P.2d at 372. In considering this issue, we also note that “it is this Court’s policy to construe both statutes and court rules in favor of deciding an appeal on the merits whenever possible.” *Lovelace Med. Ctr. v. Mendez*, 111 N.M. 336, 339, 805 P.2d 603, 606 (1991). In particular, notices of appeal, even where technically defective, should be liberally construed to allow consideration of the case on the merits. See *In re Application No. 0436-A Into 3841 (Sleeper v. Ensenada Land & Water Ass’n)*, 101 N.M. 579, 581, 686 P.2d 269, 271 (Ct. App. 1984) (the reviewing court favors the interpretation which permits a review on the merits). This principle is derived from the New Mexico Constitution, which provides that “an aggrieved party shall have an absolute right to one appeal.” N.M. Const., art. VI, § 2. In *Trujillo*, we reaffirmed our commitment to the principle that our rules should “expedite rather than hinder this right,” while acknowledging that the right to an appeal must be balanced with “the need for the efficient administration of justice.” 117 N.M. at 276, 871 P.2d at 372. We concluded that

[p]rocedural formalities should not outweigh basic rights where the facts present a marginal case which does not lend itself to a bright-line interpretation. Where . . . there are two possible interpretations relating to the right to an appeal, that interpretation which permits a review on the merits rather than rigidly restricting appellate review should be favored. *Id.* (internal quotation marks and citations omitted). Thus, the decision to dismiss an appeal is extreme and must be determined on a case-by-case basis. *Olguin v. State*, 90 N.M. 303, 305, 563 P.2d 97, 99 (1977).

{20} In the consolidated *Chavez* case we addressed whether there were any unusual circumstances that warranted considering the appeals of two petitioners, *Chavez* and *Jones*, neither of which was filed in a timely manner. 1997-NMSC-051,

¶ 1-2. In Chavez's case, we determined that although the district court's extension of time was invalid, there were "unusual circumstances" that warranted excusing the late filing. *Id.* ¶ 15, 22. Chavez, representing himself pro se, faxed the notice of appeal fifty-eight minutes late. On these facts, we determined that if the notice of appeal was untimely it was only marginally so, and thus "the right to an appeal outweigh[ed] the need for the efficient administration of justice." *Id.* ¶ 21-22. On the other hand, in Jones's case, we determined that his late filing of the notice of appeal could not be excused because it was thirty days late, and Jones cited no unusual circumstances that would excuse his untimely filing. *Id.* ¶ 23, 25. {21} The present case is closer to Chavez's case than to Jones's. Petitioner's notice of appeal was mailed from Albuquerque to the Court of Appeals in Santa Fe via certified mail four days before the filing deadline, yet it was not filed by the Court of Appeals until two days after the filing deadline. Like the delay in Chavez's case, this delay was only marginal.

Further, Petitioner reasonably anticipated that if she mailed her notice of appeal from Albuquerque to Santa Fe via the USPS, that it would arrive within four days. The unexpected delay that occurred in this case was caused by the USPS and thus constituted an unusual circumstance outside Petitioner's control. Under the circumstances, to deprive Petitioner of her constitutional "absolute right to one appeal" because of a mailing delay would frustrate the intent of our court rules and undermine our responsibility to "expedite rather than hinder this right." *Trujillo*, 117 N.M. at 276, 871 P.2d at 372.

{22} Other state courts have similarly found that a delay in the mail warrants excusing an untimely filing of a notice of appeal. For instance, in *Bosler v. Morad*, the Supreme Court of Wyoming excused the appellant's late filing by one day, concluding that he acted as a reasonably prudent person would in relying on his belief, based on prior experience, that the mail from Laramie to Casper would take less than two days to arrive. 555 P.2d 567, 570 (Wyo. 1976). Additionally, federal courts have noted that the late filing of a notice of appeal may be excused due to an unexpected mail delay. See *Scarpa v. Murphy*, 782 F.2d 300, 301 (1st Cir. 1986) ("There was no mistake by counsel, excusable or otherwise. Rather, there was inexcusable neglect by the Post Office to take more than five days . . . to transmit an adequately addressed letter three miles, and no basis for charging counsel for failing to think that more might be needed."); *Md. Cas. Co. v. Conner*, 382 F.2d 13, 16 (10th Cir. 1967) ("[T]here are a number of other situations in which tardiness is excusable and in which it is unfair to dismiss an appeal because of late filing of the notice. The most obvious example, perhaps, is undue delay in the mails resulting from a severe snow storm, or perhaps even from an unexpected swamping of the Post Office Department . . ."). See also *United States v. Reyes*, 759 F.2d 351, 354 (4th Cir. 1985) (holding that a mailing delay constituted excusable neglect).

{23} Employer/Insurer argues that *Wilson v. Massachusetts Mutual Life Insurance Co.*, 2004-NMCA-051, 135 N.M. 506, 90 P.3d 525, a case in which certiorari was never sought, is controlling, and thus, as occurred in that case, Petitioner's

untimely appeal should be dismissed. In *Wilson*, the Court of Appeals held that the State of Texas's notice of appeal, sent by United Parcel Service second day air overnight package and arriving five days later to the Court, missing the deadline by one day, was untimely because it did not involve unusual circumstances outside of the party's control:

Here, Texas's counsel had options available to her that she did not pursue, such as following up on the UPS delivery and/or filing the notice by fax. We will not extend the exception to late filing to circumstances like this, where the court played no part in the delay and where options available to the appellant to ensure timely filing of the notice were not taken. Therefore, we dismiss the Texas appeal as untimely.

Id. ¶ 12. Though the circumstances of the late filing in *Wilson* were similar to the present case, we opine that the Court of Appeals struck the wrong balance between the right to an appeal and the need for efficient administration of justice. The Court of Appeals failed to excuse the petitioner's late filing in part because "the court played no part in the delay." *Id.* We note, however, that "error on the part of the court" is merely cited as an example of "unusual circumstances beyond the control of the parties," but it is not the only ground upon which a court can excuse a late notice of appeal. *Chavez*, 1997-NMSC-051, ¶ 19. In *Chavez*, for example, we excused the petitioner's marginal late filing even in the absence of court error. *Id.* ¶¶ 21-22. In addition, the Court of Appeals in *Wilson* suggested that the petitioner's reliance on the timeliness of the courier was misplaced. 2004-NMCA-051, ¶ 11.

We conclude, however, that a petitioner reasonably may rely on his or her own knowledge and experience, as well as the representations of the mail or courier service, regarding a document's expected date of arrival. Even though the mail is occasionally delayed, it would be unreasonable for us to require petitioners to anticipate unreasonable or excessive delays in delivery. *Bosler*, 555 P.2d at 570. Moreover, it would be unreasonable for us to expect, as the Court of Appeals suggests, that appellants should file using all available delivery options to prepare for the eventuality that one of those methods might not prove effective.

Therefore, we overrule *Wilson*.

{24} We generally favor a case-by-case analysis of the facts to determine whether a late filing is attributable to excusable neglect. *Capco Acquisub, Inc. v. Greka Energy Corp.*, 2007-NMCA-011, ¶ 27, 140 N.M. 920, 149 P.3d 1017 ("Whether an appellant's conduct amounts to excusable neglect will depend on the facts and circumstances of each case."); see also *Sunwest Bank v. Roderiguez*, 108 N.M. 211, 214, 770 P.2d 533, 536 (1989) (holding that courts should analyze claims of excusable neglect based on the circumstances of each case). However, considering that mail delays, more often than not, are outside of a petitioner's control and, as we have stated, petitioners filing notices of appeal are not required to anticipate unusually long delays in the mail, we conclude that to individually determine whether each and every mailing delay constitutes excusable neglect

would be an inefficient use of the court's time and resources. Thus, we refer this matter to the Appellate Rules Committee to consider adopting a reasonable grace period for unexpected delays in the mail.

* * *

See: <http://www.nmcompcomm.us/nmcases/NMSC/2010/10sc-034.pdf>

Outcome: {25} We conclude that pursuant to Rule 12-601(C) the WCJ did not have authority to grant Petitioner's request for an extension of time. However, we also conclude that the Court of Appeals abused its discretion in failing to excuse Petitioner's late filing since it was due to an unanticipated mailing delay that was outside the control of Petitioner. Therefore, we remand this case to the Court of Appeals to consider Petitioner's appeal on the merits.

Plaintiff's Experts:

Defendant's Experts:

Comments:

Widow of NM Police Officer Is Denied Workers' Comp Death Benefits

<http://documents.jdsupra.com/a70768d6-add7-400a-91fb-21b4167c55fc.pdf>

On behalf of Johnston, Moore & Thompson

September 21, 2010

In August 2002, a 12-year-old boy was swimming in the upper Rio Grande river in New Mexico during a church event when he suddenly slipped below the surface of the water. Kevin Schultz, an off-duty officer from the nearby town of Pojoaque Pueblo, sprang into action and saved the boy from drowning.

Sadly, Officer Schultz did not survive.

Schultz was the kind of officer who always carried his service revolver, badge and radio with him, just in case of emergency. After his tragic death, he was awarded the U.S. Coast Guard's Silver Lifesaving Medal and a Medal of Valor from Pojoaque Pueblo. Both citations praised Schultz for bravery beyond the call of duty.

"Your husband, Kevin Schultz, died in the line of duty," said Pojoaque lieutenant governor George Rivera (now governor) in 2003.

The New Mexico Department of Public Safety concluded that Schultz had been killed in the line of duty. The Justice Department approved his family for benefits, acknowledging that he was killed in the line of duty. He is listed on memorial walls in both Santa Fe and Washington, D.C., which commemorate officers killed in the line of duty.

Unfortunately, the workers' compensation system says the fatal accident did not occur during the course of Schultz's employment, and they denied his widow's claim for workers' comp death benefits.

Eight years after her husband's death Schultz, who is now subsisting on Social Security disability, is still fighting for those benefits and a recent New Mexico Supreme Court ruling may make it possible for her to win.

Why Would a Hero's Widow Be Denied Workers' Compensation Death Benefits?

According to a recent story in the Albuquerque Journal, Pojoaque Police Chief John Garcia, along with the Pueblo's workers' comp insurer New Mexico Mutual Casualty Co. and a New Mexico workers' compensation judge were not convinced Officer Schultz's death occurred during the course of his employment.

Cheryl Schultz appealed, but her notice of appeal arrived two days after the deadline due to a mail delay. The New Mexico Court of Appeals dismissed her case.

This summer, the New Mexico Supreme Court ruled that the delay was beyond Cheryl Schultz's control so the case should not have been dismissed. It told the Court of Appeals to reopen the appeal.

Cheryl Schultz is seeking \$307,755 in denied workers' compensation benefits for her husband's death. She gets by on disability payments from a back injury and college financial aid.

It will likely be months before her appeal is heard.

Source: "[A Hero's Widow Is Forced to Wait for Benefits](#)"
(LawyersandSettlements.com, September 21, 2010)

A Hero's Widow Is Forced to Wait for Benefits

https://www.lawyersandsettlements.com/articles/social_security_disability/social-security-ssd-disability-6-15022.html

September 21, 2010. By Gordon Gibb



Albuquerque, NMA common problem with [social security disability](#) is the delay many Americans encounter in obtaining their SSDI benefits after applying for them.

It is such a problem that Congress included funds in last year's economic stimulus measure in an effort to process a backlog of claims. This year the Obama Administration seeks an additional \$350 million to help funnel applications for Social Security benefits more quickly to those in need.

But it's not just SSDI claimants who are seething with wrath at the bureaucracy while their bills pile up. It happens in other sectors, too.

A compelling story has surfaced in New Mexico about an off-duty police officer who came to the aid of a young boy in distress while swimming during a church event. It was in August 2002 that the 12-year-old boy slipped below the surface of the upper Rio Grande. Kevin Schultz, an off-duty officer with the Pojoaque Pueblo police, came to the boy's aid.

The boy survived, but Schultz did not.

In the aftermath of the brave officer's death—a man who always carried his service revolver, his badge and his radio with him in the event his help was required in an emergency—there have been delays in acquiring workers' compensation benefits for his family.

A trio of doubters is standing in the way of those benefits, according to the *Albuquerque Journal* on 9/14/10. Pojoaque Police Chief John Garcia, Workers' Compensation Judge Helen Stirling and New Mexico Mutual Casualty Co. were not convinced that Schultz's lifesaving deed was "within the course and scope of his employment."

Yet Schultz received a number of honors, including the US Coast Guard's Silver Lifesaving Medal and the Medal of Valor from the Pojoaque Pueblo. Both awards cited Schultz's bravery beyond the call of duty.

"Your husband, Kevin Schultz, died in the line of duty," Pojoaque Governor George Rivera, then the lieutenant governor, wrote Cheryl Schultz in October 2003. "The Pueblo of Pojoaque will do anything necessary for you to receive survivor's benefits, workmen's compensation or any other benefits available to you and your grieving family."

Schultz was approved for benefits by the Justice Department, acknowledging that he had been killed in the line of duty. The New Mexico Department of Public Safety also concluded that the officer had died in the line of duty. His name is listed on the law enforcement memorial wall in Santa Fe.

Schultz's name also graces the National Law Enforcement Officers Memorial in Washington, DC, which commemorates officers killed in the line of duty.

And yet the police chief indicated that in his view Schultz's was not the result of a work-related injury—and a judge backed up that position in court, denying the claim in March 2008 and finding for New Mexico Mutual.

Cheryl Schultz appealed that ruling, but the notice of appeal was delayed in the mail and arrived two days after the stated deadline. The Court of Appeals dismissed the case.

In the summer, however, the state Supreme Court overturned the dismissal and remanded the Schultz case to the Court of Appeals, finding that the filing delay was not within the control of Schultz's widow.

While the case is back in play, it will likely be months before the matter will be heard. In the meantime, Cheryl Schultz is forced to exist on social security benefits, her SSI disability check from a previous back injury and financial aid for which she qualifies as a mature student attending the University of New Mexico. The amount Schultz is fighting for is \$307,755. And even though her husband has now been dead eight long years, Schultz is still fighting for those benefits.

Widow of officer seeks compensation

<http://www.scdailypress.com/site/2012/08/14/widow-of-officer-seeks-compensation/>

August 14, 2012 Written by silvercitydailypress

LAS CRUCES, N.M. (AP) — The New Mexico Supreme Court will hear arguments in a lawsuit by a police officer's widow who is seeking workers' compensation benefits after her husband died rescuing a boy from a drowning while off duty.

Officer Kevin Schultz jumped into the Rio Grande in August 2002, saved a 12-year-old boy, collapsed face-down in shallow water and drowned. A medical examiner said the 44-year-old officer may have hit his head on a rock when he rushed into the river, an injury that incapacitated him.

Schultz's widow, Cheryl, has already lost two rounds in court.

The justices for the state's highest court will hear arguments Wednesday in her lawsuit against the Pojoaque Tribal Police Department and New Mexico Mutual Casualty Co.

Lawyers representing the department and insurance company said in court papers that the officer's courage, though admirable, shouldn't factor into the case.

They also say Cheryl Schultz missed the filing deadline to seek workers' compensation benefits and point out that Kevin Schultz wasn't on duty as a Pojoaque police officer and that his death occurred outside the boundaries of Pojoaque tribal land.

George Wright Weeth, the lawyer for Cheryl Schultz, said the only reason she did not file a claim for workers' compensation benefits within a year was that tribal police lulled her into a false sense of security. They promised that they were handling all the paperwork on her behalf.

In her lawsuit, Cheryl Schultz says John Garcia, the Pojoaque tribal police chief, assured her in July 2003 that he would submit the workers' compensation claim. This was still within the one-year deadline for filing.

But in October 2003, Cheryl Schultz discovered that no workers' compensation claim had been made on her behalf. She then filed a complaint.

Thus far, the courts have ruled against Cheryl Schultz.

A workers' compensation judge in 2008 struck down her claim on two grounds.

One was that the statute of limitations barred her claim from being considered. The other was that the accident in which her husband died "did not arise out of or in the course of employment.'

She appealed. The state Supreme Court decided that the merits of her case should be heard by the New Mexico Court of Appeals.

But last year, the Court of Appeals ruled that her complaint had not been timely. It did not address whether the officer's death occurred in the course of his job as a police officer.

Officer's widow seeks \$300K in workers compensation

<http://www.koat.com/article/officer-s-widow-seeks-300k-in-workers-compensation/5042499>

Aug 16, 2012 Alana Grimstad Santa Fe Bureau Reporter

Case goes before New Mexico Supreme Court

SANTA FE, N.M. - For 10 years, the wife of a police officer has been fighting for workers' compensation benefits after her husband died saving a boy's life on a church fishing trip.

Cheryl Schultz has spent the last decade sitting in countless courtrooms, but Wednesday may have been her last day in court.

"I think I'm ready for other chapters to open," Schultz said.

Ten year ago, her husband, Kevin Schultz, dove in after a drowning 12-year-old and saved his life. Unfortunately, the police officer didn't survive.

"Every day, I'm proud of him. I know Kevin would not have done anything different," Schutlz said.

At the time, Schultz said, two officers with the Pojoaque Tribal Police Department, which is where her husband worked, told her they would file for workers' compensation for her, but they never did. When Schultz found out and filed herself, it was too late.

"I think the part that bothers me the most is that they're expecting me to have known the law, known the system. I'm not even the employer or the employee. I'm the widow," Schultz said.

Weeth is fighting the Police Department and the insurance company, which said she missed the filing deadline and thus won't get \$300,000 in benefits.

"It was a very tragic incident that occurred, but that's not the legal issues that have been raised in this case," attorney Richard Shane said.

The judges will now decide whether to end the case at the New Mexico Supreme Court or send it back to the Court of Appeals. It could take months before its verdict.

Even if the court rules in her favor, Schultz will have two more hurdles. Opponents argue her husband was off-duty and on tribal land when he died.

Court Hears Claim of Police Hero's Widow

<https://www.abqjournal.com/125359/court-hears-claim-of-police-heros-widow.html>

August 20th, 2012 Updated: August 19th, 2012 By Joline Gutierrez Krueger / Journal

ALBUQUERQUE, N.M. — It's stunning to think that 10 years have passed since Pojoaque Pueblo police officer Kevin Schultz plunged into the rushing waters of the upper Rio Grande to save the life of a drowning child only to lose his own.

But then you look at the people and the things he left behind on that Aug. 17, 2002, church outing he and his family were attending near Pilar, and you see the evidence of a decade gone on without him.

His son, Kaegan, was in elementary school then, four years younger than the 12-year-old boy Schultz rescued that day. This week, Kaegan starts classes as a freshman at the University of New Mexico.

Schultz's wife, Cheryl, wore her hair short then. She loved him, loved their home in Arroyo Seco and loved her life as a police officer's wife.

Her hair cascades down to her waist now. Last December, she graduated with honors from UNM. Last month, she re-entered the workforce as a paralegal. She is trying to sell the home.

She is trying to move on.

She still loves her husband, still aches from missing him, still fights to honor what he did with his dying breath and to set precedent that will benefit other law enforcement officers and first responders who risk their lives no matter if they are on or off the clock.

Because those men and women are never off the clock.

Last Wednesday, two days before the 10th anniversary of her husband's death, Cheryl Schultz took a seat in the back of a Santa Fe courtroom and listened as the

state Supreme Court justices heard oral arguments on whether her husband was entitled to workers' compensation benefits.

That it has been 10 years with no resolution on the matter is not only stunning, it is unconscionable.

And it is indicative of the breakdown of a system that's supposed to be simple for the grieving and the injured to access without need of an attorney or the courts. This system and those people involved let Cheryl Schultz, her son and the memory of a brave and selfless cop down.

The first and worst to fail them was Pojoaque Police Chief John Garcia, who Schultz has said comforted her in her time of loss by assuring her that he would take care of filing the paperwork for workers' compensation and all other benefits due her.

But 14 months after her husband's death, she learned he had not filed.

"I called him a coward," she said.

According to his deposition, Garcia said he was unsure whether he had ever made her that promise or whether her husband had been killed in the line of duty.

This, after the Department of Justice; the National Law Enforcement Officers Memorial in Washington, D.C.; the Coast Guard; the New Mexico Department of Public Safety and the Pojoaque Pueblo itself had all declared that Kevin Schultz was killed in the line of duty.

She filed for the workers' compensation herself against the pueblo tribal police and its insurer, New Mexico Mutual Insurance Co.

And here is where things begin to get complicated. The workers' compensation mediator dismissed Cheryl Schultz's claim and recommended that she obtain a lawyer. She found one — an arduous task since few attorneys practice in workers' compensation claims —and a second complaint was filed June 18, 2004.

And then the workers' compensation judge ruled that the statute of limitations in which to file a claim had passed.

Thus began a series of legal twists and turns that have taken her case twice before the state Court of Appeals and once previously before the state Supreme Court. Last Wednesday, Schultz's attorney, George Weeth, argued to the Supreme Court that the conduct of the employer should be considered in this matter and that the mediator should have counseled Cheryl Schultz about the deadlines for filing.

But Richard Shane, attorney for the Pojoaque police and the New Mexico Mutual Insurance Co., countered that there had been no findings that his clients had acted inappropriately.

The justices heard an hour of the attorneys' oral arguments, pelting Shane with questions that appeared to indicate an unease with the way the workers' compensation system had worked — or didn't work — in this case. It could be months before they issue an opinion, months more should the case be kicked back to the state Court of Appeals.

For Cheryl Schultz, it has never been about the money — an estimated \$307,755 — but about protecting those who protect us.

"Police officers have the public and department expectation to respond whether or not they are on duty," she said. "But they don't have the backup if things go south."

Last Friday, she and her family and friends planned to travel to the site along the Rio Grande where Kevin Schultz gave his life to save a child 10 years ago. They will remember him as a hero. They will remember him with honor, and they will hope again that eventually others will do the same.

Workers' comp: Was officer on duty at time of his death?

<http://www.safetynewsalert.com/workers-comp-was-officer-on-duty-at-time-of-his-death/>

August 31, 2012 by Fred Hosier

Officer Kevin Schultz died saving a 12-year-old boy from drowning. His widow seeks workers' comp death benefits. The questions facing New Mexico's Supreme Court: Did she file paperwork on time and was Schultz "on duty" at the time of his death? Schultz had taken a day off to chaperone a church youth group on a picnic. At the picnic, he jumped into the Rio Grande River near Pilar, NM, and saved a boy from drowning.

Immediately [after the officer helped the boy to the river's edge, he collapsed face-down in shallow water.](#)

A medical examiner says Schultz may have hit his head on a rock when he rushed into the river.

Now, his wife, Cheryl Schultz, is seeking death benefits.

She's lost two rounds so far.

A workers' comp judge struck down her claim on two grounds:

1. The statute of limitations barred her claim because she filed more than a year after her husband's death, and
2. His death didn't arise out of or in the course of employment.

A state appeals court also denied benefits, ruling Cheryl Schultz didn't file paperwork on time. But the appeals court didn't address whether her husband's death arose out of or in the course of his employment.

Did he die in line of duty?

Now, the [New Mexico Supreme Court](#) has heard arguments in the case.

Cheryl Schultz tried to refute both findings of the workers' comp judge. The officer's widow says the [chief of the Pojoaque Pueblo police department](#) had assured her he would take care of filing the proper workers' comp paperwork. It was 14 months after her husband's death when she found out he hadn't.

In a deposition, the police chief said he couldn't remember whether he had made that promise or not.

Cheryl Schultz also argues that a police officer is truly never off duty.

In fact, a letter to federal officials from the lieutenant governor of Pojoaque Pueblo said Schultz had died in the line of duty.

The Department of Justice, the National Law Enforcement Officers Memorial, the Coast Guard and the New Mexico Department of Public Safety have all declared that Kevin Schultz died in the line of duty.

There's no word on when the state supreme court will issue its ruling. It could take months.

News reports say the justices pelted Pojoaque Pueblo's attorney with questions and "appeared to indicate an unease with the way the workers' compensation system had worked — or didn't work — in this case."

Cheryl Schultz's attorney says [in other states, similar cases have had positive outcomes for the family of the deceased](#).

The amount of workers' comp benefits in question: \$307,000.

Should the court award death benefits to Cheryl Schultz? Let us know what you think in the comments below.

Court reinstates case by New Mexico officer's widow

<http://www.theoaklandpress.com/article/OP/20130411/NEWS/304119881>
04/11/13, 12:01 AM EDT | UPDATED: ON 04/11/2013 By BARRY MASSEY

The ruling by state Supreme Court is the latest twist in a long-running legal fight waged by the widow of Pojoaque Pueblo Police Officer Kevin Schultz, who was off-duty when he jumped into the river in northern New Mexico to save a 12-year-old boy in August 2002.

Despite the ruling, it's still not certain that the widow will receive any benefits. The case goes back to the state Court of Appeals to deal with an unresolved legal question.

Schultz, 44, was fishing near the small community of Pilar with a group of children from his church when the boy fell into the water. After pulling the boy from the river, Schultz collapsed in shallow water and drowned.

According to a medical examiner, Schultz may have hit his head on a rock and the injury could have incapacitated him.

Schultz's widow, Cheryl, unsuccessfully sought workers' compensation benefits for his death. A workers' compensation judge concluded in 2007 that her claim was filed too late and that her husband wasn't performing the duties of his job when he died.

The Court of Appeals then dismissed her appeal. However, the Supreme Court revived the case in 2010, ordering the appeals' judges to consider the widow's claim.

Cheryl Schultz lost again when the Court of Appeals concluded she had missed a deadline for filing for workers' compensation benefits.

The Supreme Court disagreed in its ruling Thursday, saying the claim will be allowed because delays were caused by Kevin Schultz's employer. The tribal police chief had assured the officer's widow that the department would take care of the workers' compensation paperwork, but that didn't happen.

The justices said, "If an employee entitled to workers' compensation benefits fails to file a complaint or a claim within the limitation period because the conduct of the employer or insurer reasonably led the employee to believe compensation would be paid, then the employee has a reasonable time thereafter within which to file."

The case was ordered back again to the Court of Appeals, which must determine whether the officer died "within the course and scope of his employment."

Cheryl Schultz's lawyer did not immediately return a telephone message seeking comment.

Before working with Pojoaque police, Kevin Schultz was a deputy with the Santa Fe County Sheriff's Department.

New Mexico Supreme Court Shows That Defense Selection Is Critical

https://www.workerscompensation.com/news_read.php?id=16486

04/14/13 Robert Wilson

The New Mexico Supreme Court reversed a lower court's decision on a workers' compensation death claim this week and in so doing inadvertently demonstrated that an insurance company's denial of a claim should be based on the most relevant

defense. In this particular case, the widow of a police officer had been seeking workers' compensation benefits for the death of her husband. Kevin Schultz drowned while saving a child in a river during a church outing. He was acting as a chaperone to the group in another jurisdiction, and was off duty at the time.

His employer, the Pojoaque Tribal Police Department, and the insurance company, New Mexico Mutual, denied her claim, primarily on the basis that she had not filed for benefits within the allowable time frame. As a secondary reason, they determined that his death was not within the course and scope of his employment as a police officer. Lower courts supported that contention.

The New Mexico Supreme Court, in a 5-0 decision, said "not so fast". The basis of their reversal was rooted in the timeliness of the initial filing of benefits, which was the primary reason for denial. Apparently the widow, Cheryl Schultz, testified that the delay was due to the police departments promises that "they were taking care of all the paperwork", a claim that the Police Chief could neither confirm nor deny. Based on that consideration, the Supreme Court determined that the denial, based on a procedural filing violation, was not valid, and returned the case to lower courts for reconsideration.

This case amply demonstrates the need for having, and selecting, the right and justifiable reason for denying a claim. In this case, the insurance company, in my view, had it, but they opted for whatever reason to primarily rely on a flimsy procedural defense. Admittedly, it is a tragic story, as a good man died while saving the life of a small child. That still doesn't mean he was on the job, or even within the course and scope of his employment. Critics of that view say that benefits should be awarded, as he was acting as a public servant when he dove into the river to save a life. The case even saw a statement from the lieutenant governor of Pojoaque Pueblo, who wrote "that the tribal government considered Schultz's death to be in the line of duty." It stated that "Schultz acted the way a police officer should have, no matter that he technically was not on his beat or in uniform."

Balderdash.

That view seems to assume that no other chaperone, one who happened to be a plumber for instance, would have attempted to save that child. Are we to believe that anyone who happens to perform a similar function to that required of their job while off duty is entitled to benefits if injured? I have a neighbor who is a professional carpenter. He currently is replacing his own roof. If he falls off of that roof while performing home maintenance, should we assume his employer and their insurer are "on the hook" because he was acting as a carpenter should have?

This is a case of tragic loss that is now turning on pure emotion. While no one wants to see the widow hurt, I cannot logically see the extension of protection with the umbrella of round the clock coverage under workers' comp. It is outside the responsibilities of the insurer in our current industry models. Someone on his own personal time did something heroic. That happens more than we realize. Most people do not get the benefit of round the clock coverage based on their job title.

The insurance company now has, in my view, an uphill battle in pursuing this reason to deny benefits. The employer they represent certainly is not making it any easier. The Pojoaque Tribal Police Chief submitted Schultz's name to the National Law Enforcement Officers Memorial in Washington, DC, which now lists his name. It only honors law enforcement officers who die in the line of duty. The Chief successfully made the case that "Officer Schultz died while performing the act of a selfless policeman."

The second lesson here I suppose, is that an insurer needs to work closely with the employer they represent. The employer participated in the denial of benefits, but has possibly shot itself in the foot with their actions outside the case.

I happen to be traveling to New Mexico this weekend, as part of my multi-stop trek westward towards RIMS in Los Angeles next week. I will be visiting my father in Farmington. My commute from Albuquerque will take me through both the Jicarilla Apache and Navajo reservations, where I will rest comfortably knowing the tribes have fully trained forces who will "perform the acts of selfless policemen" - although truth be told I've never seen anyone there except the State Patrol, usually around the town of Cuba. And of course the Cuba city police, who have all had speed radar guns permanently attached to their right hands. But I digress.....

While the final result remains to be seen, there is a lesson here. If you have a fair and just reason for denial, and multiple possible defenses in the case, choose the right one, not the easy one. The easy one will often prove flimsy and more difficult to defend. The right one may be emotionally more challenging, but in the end, it is still the correct one to pursue.

N.M. widow can seek workers comp death benefits despite late filing

<http://www.businessinsurance.com/article/20130416/NEWS08/130419869/NM-widow-can-seek-workers-comp-death-benefits-despite-late-filing>
4/16/2013 Sheena Harrison

The widow of a New Mexico police officer should be allowed to proceed with a late workers compensation claim because her husband's employer gave the false impression that it would handle the filing for her, the New Mexico Supreme Court has ruled.

Kevin Schultz, an officer for the Pojoaque Tribal Police Department, drowned in August 2002 while saving a 12-year-old boy from drowning in the Rio Grande River. Mr. Schultz was off duty and was chaperoning a church outing for school children at the time of his death, court records show.

Wife Cheryl Schultz filed for workers comp death benefits in October 2003 after the one-year statute of limitations had expired for Mr. Schultz's claim, records show.

Mrs. Schultz argued that she filed late because members of the Pojoaque police department promised her in a July 2003 meeting that they would “take care of everything for her,” including filing for workers comp death benefits.

While the department requested federal death benefits on behalf of Mr. Schultz, it did not file a workers comp death benefits claim on Mrs. Schultz's behalf. Mrs. Schultz said she filed her comp claim after finding out that the department was not going to submit the paperwork.

A workers comp judge denied Mrs. Schultz’s claim, partly because it was filed too late. The New Mexico Court of Appeals later affirmed that decision. The workers comp judge also found that Mr. Schultz’s death did not arise from his employment.

However, the New Mexico Supreme Court unanimously reversed that ruling last week. The state high court found that the one-year statute of limitations should not apply for Mrs. Schultz because the department had given her a reasonable expectation that it would file for workers comp death benefits, and she filed shortly after finding out that no filing had been submitted.

The court remanded the case to the New Mexico Court of Appeals to decide whether Mr. Schultz’s death arose out of his work.

Was police officer on duty at time of death? Widow seeks workers’ comp

<http://www.safetynewsalert.com/police-officer-death-workers-comp/>

April 29, 2013 by Fred Hosier

The New Mexico Supreme Court has ordered a trial court to take another look at a case involving a police officer who died while saving a drowning child. Whether he was in the course and scope of his employment at the time will determine if his widow gets workers’ comp death benefits.

Officer Kevin Schultz with the Pojoaque Tribal Police Department had taken a day off to chaperone a church youth group on a picnic. While there, he jumped into the Rio Grande River near Pilar, NM, and save a 12-year-old boy from drowning.

Immediately after saving the boy, Schultz collapsed face-down in shallow water.

A medical examiner says while entering the river, Schultz may have hit his head on a rock, and that led to his death.

His wife, Cheryl Schultz, sought workers’ comp death benefits.

A workers’ comp judge (WCJ) found two problems with the request for benefits:

- They were requested more than a year after the officer died, and
- He was off duty when the incident occurred.

'We'll take care of it'

Why did Cheryl Schultz wait more than a year to file for the benefits? One reason: The tribal police chief had told her he'd take care of filing the workers' comp paperwork.

When she realized he hadn't done that, she filed herself.

Cheryl Schultz appealed the WCJ's decision to a trial court. Her argument: The delay in filing was caused by the employer's conduct ... or in this case, the lack of it. But the trial court agreed with the WCJ. Last summer, Mrs. Schultz took her case to the New Mexico Supreme Court (NM SC).

The state's highest court reversed the judgement of the WCJ and the trial court. The NM SC noted that the state's workers' comp law had an exception to the one-year period for filing a death benefits claim: when the filing delay is caused by the employer's conduct.

And in this case, the employer's conduct — promising Mrs. Schultz that it would take care of the workers' comp filing and then not doing so — did cause the delay.

Now the case will go back to the trial court to determine whether Officer Schultz died within the course and scope of his employment and whether Mrs. Schultz will receive workers' comp death benefits.

Her attorney says he has a strong case in favor of the comp benefits. Officer Schultz is listed on the National Law Enforcement Officers Memorial in Washington, DC which is only for those who die in the line of duty. A detective with the Schultz's police force sent the paperwork seeking this honor.

The attorney also has a letter from the lieutenant governor of Pojoaque Pueblo who wrote the tribal government considered Schultz's death to be in the line of duty.

Do you think Schultz's widow should get workers' comp death benefits? Let us know in the comments below.

(*Schultz v. Pojoaque Tribal Police Department*, Supreme Court of NM, No. 33,372, 4/11/13)

Court of Appeals of New Mexico.

<http://caselaw.findlaw.com/nm-court-of-appeals/1642907.html>

Cheryl SCHULTZ on behalf of Kevin SCHULTZ (deceased), Worker–Appellant, v. POJOAQUE TRIBAL POLICE DEPARTMENT, and New Mexico Mutual Casualty Company, Employer/Insurer–Appellees.

No. 28,508.

Decided: August 19, 2013

Academy Compensation Clinic, P.C., George Wright Weeth, Albuquerque, NM, for Appellant. Riley, Shane & Keller, P.A., Richard J. Shane, Kristin J. Dalton, Albuquerque, NM, for Appellees.

OPINION

{1} In this workers' compensation case, the issue before us is whether Officer Kevin Schultz's accidental death arose out of and within the course of his employment with the Pueblo of Pojoaque Tribal Police Department (Employer). The workers' compensation judge (WCJ) concluded that Officer Schultz's death did not arise out of and in the course of his employment because he was off-duty, outside his jurisdiction, and on a personal day trip near the Rio Grande at the time of the accident. Because of the unique nature of law enforcement duties, we conclude that law enforcement officers may recover workers' compensation benefits in some instances for off-duty injuries occurring in response to circumstances reasonably calling for police officer assistance. Accordingly, because we also hold that there was a sufficient nexus between Officer Schultz's actions in undertaking the rescue of a drowning child and the duties of his employment as a police officer, we reverse.

BACKGROUND

{2} The tragic facts of this case are not in dispute. Officer Schultz drowned while saving a twelve-year-old boy who had fallen into the Rio Grande. Officer Schultz responded to the child's cry for help and jumped into the swift-moving water to rescue him. While Officer Schultz was able to get the child to safety, he did so at the peril of his own life and suffered an unknown injury in the course of the rescue that rendered him unable to save both himself and the child.

{3} On the day of the rescue, Officer Schultz was off-duty and voluntarily chaperoning a church youth group trip to a recreational area on the Rio Grande near Pilar, New Mexico. There were four adult chaperones on the trip, including Officer Schultz and his wife, Cheryl. The child Officer Schultz rescued was one of the children under their supervision. Officer Schultz was not "on-call" that day, nor was he in uniform, although his badge and department-issued pager and firearm were found on his body. The incident also took place outside the boundaries of the Pueblo of Pojoaque reservation. Nevertheless, whether Officer Schultz believed his duty to rescue the child arose from his responsibilities as a police officer, a

chaperone, or some measure of both, the parties agree that Officer Schultz died a hero.

{4} Consistent with public expectations that police officers may be required to act in their official capacity while off-duty, Officer Schultz's sacrifice was honored at both the national and local levels. Officer Schultz is recognized on the National Law Enforcement Officers Memorial and the State of New Mexico Law Enforcement Memorial, both of which require for inclusion a finding that the officer died in the line of duty. Cheryl and the couple's son were also awarded survivor benefits under the Public Safety Officers' Benefits Act. See 42 U.S.C. § 3796(a) (2006) (providing for survivor benefits where the public safety officer "died as the direct and proximate result of a personal injury sustained in the line of duty"). Indeed, the lieutenant governor of the Pueblo of Pojoaque sent Cheryl a letter recognizing that "[y]our husband, Kevin Schultz, died in the line of duty" and that the "Pueblo of Pojoaque will do anything necessary for you to receive survivor's benefits, [workers'] compensation or any other benefits available to you and your grieving family."

{5} Cheryl subsequently filed a workers' compensation claim for medical and survivor benefits against Employer and its insurer, New Mexico Mutual Insurance Company. Following the trial, the WCJ barred recovery by concluding, in part, that Officer Schultz's death did not arise out of and occur in the course of his employment.¹

DISCUSSION

Standard of Review

{6} Because the material facts in this case are not in dispute, we review de novo. See *Losinski v. Drs. Corcoran, Barkoff, & Stagnone, P.A.*, 1981-NMCA-127, ¶ 4, 97 N.M. 79, 636 P.2d 898 ("Where [the] facts are not in dispute, it is a question of law whether an accident arises out of and in the course of employment."). In reviewing this issue, we are mindful that the Workers' Compensation Act (WCA) represents a "delicate balance between the rights and interests of the worker and the employer." *Gonzalez v. Performance Painting, Inc.*, No. 32,844, slip op. ¶ 9 (N.M.Sup.Ct. May 30, 2013). Thus, "any judicial analysis under the [WCA] must balance equally the interests of the worker and the employer without showing bias or favoritism." *Id.* (alteration in original) (internal quotation marks and citation omitted).

{7} Given the unique nature of law enforcement duties, including the fact that in some circumstances an off-duty police officer may be required to respond in an official capacity to incidents arising in the officer's presence, courts have struggled with determining the compensability of off-duty police officer injuries using traditional interpretations of the "arising out of and in the course of employment" test. Below, we discuss the traditional analysis, the unique risks faced by police officers both on- and off-duty, application of the traditional "arising out of and in the course of employment" test to off-duty police officer injuries, and why the traditional analysis is an inadequate benchmark for determining the compensability

of off-duty police officer injuries. We conclude by formulating the proper inquiry for injuries to off-duty police officers responding to incidents reasonably calling for police assistance and hold that Officer Schultz's death arose out of and in the course of his employment.

The Historical "Arising Out of and in the Course of Employment" Test in New Mexico

{8} "For an injury to be compensable it must be caused by an accident 'arising out of and in the course of employment.'" *Velkovitz v. Penasco Indep. Sch. Dist.*, 1981-NMSC-075, ¶ 2, 96 N.M. 577, 633 P.2d 685 (quoting NMSA 1978, Section 52-1-9 (1973)). "Arising out of" and "in the course of employment" are two distinct requirements. *Hernandez v. Home Educ. Livelihood Program, Inc.*, 1982-NMCA-079, ¶ 9, 98 N.M. 125, 645 P.2d 1381. The "arising out of" prong relates to the cause of the accident. *Id.*; see *Velkovitz*, 1981-NMSC075, ¶ 2 ("For an injury to arise out of employment, the injury must have been caused by a risk to which the injured person was subjected in his employment."); *Kloer v. Municipality of Las Vegas*, 1987-NMCA-140, ¶ 3, 106 N.M. 594, 746 P.2d 1126 ("The term 'arising out of' the employment denotes a risk reasonably incident to claimant's work."). Typically, accidents satisfying this prong will include those occurring during acts the employer has instructed the employee to perform, acts incidental to the worker's assigned duties, or acts that the worker had a common law or statutory duty to perform. *Ramirez v. Dawson Prod. Partners, Inc.*, 2000-NMCA-011, ¶ 14, 128 N.M. 601, 995 P.2d 1043. The term "course of employment," on the other hand, "relates to the time, place, and circumstances under which the accident takes place." *Velkovitz*, 1981-NMSC-075, ¶ 2. We have stated before that "an injury occurs in the course of employment when it takes place within the period of employment, at a place where the employee may reasonably be, and while the employee is reasonably fulfilling the duties of employment or doing something incidental to it." *Kloer*, 1987-NMCA-140, ¶ 7. In order for a claimant to be awarded compensation, both of the requirements for "arising out of" and "in the course of employment" must co-exist at the time of the injury. *Garcia v. Homestake Mining Co.*, 1992-NMCA-018, ¶ 6, 113 N.M. 508, 828 P.2d 420.

{9} New Mexico's use and construction of the "arising out of and in the course of employment" standard in workers' compensation jurisprudence is not novel. See 1 Arthur Larson & Lex Larson, *Larson's Workers' Compensation Law* § 3.0, at 3-1, -4 (2012) (referring to the "arising out of and in the course of employment" standard as the "almost-universal coverage formula" with the "arising out of portion construed to refer to causal origin, and the course of employment portion to the time, place, and circumstances of the accident in relation to the employment" (internal quotation marks omitted)). Although the term is used in both workers' compensation and tort cases, the differing policy objectives generally weigh against recognizing an overlap between the two diverging constructions of this single phrase. See *Ovecko v. Burlington N. Santa Fe Ry. Co.*, 2008-NMCA-140, ¶¶ 11-13, 145 N.M. 113, 194 P.3d 728; *Lessard v. Coronado Paint & Decorating Ctr., Inc.*, 2007-NMCA-122, ¶ 9, 142 N.M. 583, 168 P.3d 155.

Off-Duty Police Officers and the "Arising Out of and in the Course of Employment" Standard

{10} A distinctive body of workers' compensation law has arisen surrounding injuries to off-duty police officers. This is because police officers fulfill a unique role in society that coincides with increased responsibilities and a greater sense of duty to their employment than the average citizen. *Luketic v. Univ. Circle, Inc.*, 730 N.E.2d 1006, 1011 (Ohio Ct.App.1999) (stating that a police officer's duty to protect the public "is distinctive in nature and quantitatively greater than the risk common to the public"). This sense of duty can arise both from official dictates of police officer conduct or from societal expectations that the amount of authority with which we imbue police officers corresponds to our reliance that they at all times effectively fulfill their mission to protect and serve the public. *Jordan v. St. Louis Cnty. Police Dep't*, 699 S.W.2d 124, 126 (Mo. Ct.App.1985) ("In a sense, a police officer is never off-duty."); see *Lane v. Indus. Comm'n of Ariz.*, 178 P.3d 516, 521 (Ariz.Ct.App.2008) ("[F]ew other fields of employment require the employee, during nonworking hours, to risk his or her own safety to protect others."). Rarely do a police officer's duties begin and end at the time clock. *City of El Dorado v. Sartor*, 729 S.W.2d 430, 432 (Ark.Ct.App.1987) ("[I]t is the nature of police work that an officer might at any time be called into duty, either by his superiors or by what he observes.").

{11} Often, however, the nature of law enforcement duties and the varying environments where an officer may be called upon to exercise those duties have created difficulties in applying the traditional "arising out of and in the course of employment" analysis to off-duty activities that result in injury. See *Cooper v. Dayton*, 696 N.E.2d 640, 646, 648 (Ohio Ct.App.1997) (noting the difficulty in applying the traditional workers' compensation factors, such as "time, place, and circumstances," to an instance where a police officer was moonlighting as a grocery store security guard and was injured attempting to arrest shoplifters). In some cases, the circumstances surrounding the off-duty officer's injury call for the officer to act in a role consistent with a primary responsibility of crime interdiction. For example, in *Luketic*, an off-duty police officer visiting a bank on a personal errand was shot by a bank robber while attempting to prevent a robbery. 730 N.E.2d at 1008. The court held that the officer was entitled to workers' compensation for his injuries, despite the officer being on injury leave and outside his jurisdiction at the time of the incident. *Id.* at 1011; see *City of Phoenix v. Indus. Comm'n of Ariz.*, 742 P.2d 825, 830 (Ariz.Ct.App.1987) (affirming an award of survivor benefits to the family of an off-duty police officer who was killed while moonlighting as a hotel security guard where the officer was shot while investigating a robbery that occurred at the hotel). In more difficult cases, the off-duty officer's injury arises while rendering assistance to members of the public but not necessarily in ways that implicate police-specific duties. For instance, in *Spieler v. Village of Bel-Nor*, the off-duty police officer was returning from a party with his date when they came upon a car accident outside his jurisdiction. 62 S.W.3d 457, 458 (Mo.Ct.App.2001). The officer approached the accident to check on the passengers and then used his date's cellular phone to call 911. *Id.* While standing in the street, the officer was struck by a passing car and severely injured. *Id.* The court affirmed the award of workers' compensation benefits. *Id.* at 461; see *Lane*, 178 P.3d at 518-19 (awarding benefits to an off-duty police officer who was shot when, following a mountain bike excursion with his friends, random strangers began firing on the

group when the officer was attempting to pull an imperiled friend to safety); *Traveler's Ins. Co. v. Hobbs*, 222 S.W.2d 168, 170–71 (Tex.Civ.App.1949) (affirming the award of workers' compensation benefits where an off-duty police officer was walking with his wife and was struck by a car on the basis that the officer assumed the role of a police officer prior to being struck by pushing his wife out of the way of the vehicle).

{12} While these cases present widely different factual scenarios consistent with the myriad of risks faced by police officers on a daily basis, the ultimate determination in most cases is typically rooted in statutes or police department regulations compelling or authorizing the off-duty action, or, at the least, an implicit expectation that police officers will take some action not required of the general public when emergencies arise. See *Lane*, 178 P.3d at 520 (stating that the police department code of conduct requiring officers to act in an official capacity if confronted with an incident "requiring police action . . . [to] safeguard life, property, or prevent the escape of a felon" exposed the officer to "an increased risk of being injured by gunfire if a crime or other threat to life occurred in his presence than would be faced by a similarly situated non-officer" (omission and alteration in original) (footnote and internal quotation marks omitted)); *Spieler*, 62 S.W.3d at 459 ("An officer reading [the provisions of the police manual] would certainly think his superiors would expect him to stop at the scene of an accident, wherever occurring, to determine whether people at the scene needed immediate assistance, and to call for such assistance when necessary."); *Luketic*, 730 N.E.2d at 1011 ("[The a]ppellant had a legal and moral duty, pursuant to statutory authority and his oath as a police officer, to protect the public and attempt to prevent a violent felony. This duty placed [the] appellant in his 'zone of employment' when he was shot while intervening in the armed bank robbery, notwithstanding that [the] appellant was off duty and outside his jurisdictional authority as a police officer."). Courts construing these statutory and regulatory provisions to encompass a police officer's conduct at the time of the injury have concluded either that there was a benefit flowing to the employer from the officer's actions or that the officer's conduct furthered the interests of the employer so as to justify the award of compensation. See *City of El Dorado*, 729 S.W.2d at 432 (concluding that an off-duty officer involved in an altercation with a belligerent man at a bar "was motivated by the public interest, and that the attack upon his person, and the subsequent disturbance of the peace . . . constituted a serious criminal offense or threat to life . . . [and] that the City of El Dorado obtained a benefit from the appellee's actions"); *Municipality of Bethel Park v. Workmen's Comp. Appeal Bd.*, 636 A.2d 1254, 1259–60 (Pa.Comm. Ct. 1994) (holding that an unofficial policy encouraging off-duty officers to investigate criminal activity was sufficient to conclude that the officer was acting "in furtherance of the [e]mployer's interests when he suffered his heart attack" after investigating a potential disturbance near his backyard).

{13} However, insofar as these cases purport to apply the traditional arising out of and in the course of employment test, they remain largely unpersuasive. Many of the statutory or police department provisions that have been relied upon speak only generally of a police officer's duty to act. See *City of Pittsburgh v. Workmen's*

Comp. Appeal Bd., 529 A.2d 1196, 1197 (Pa.Comm. Ct. 1987) ("All members, although relieved from actual performance of duty, are still held to be on duty at all times and must be prepared to act immediately . in all cases needing immediate action coming to their attention." (internal quotation marks and citation omitted)); see also Lane, 178 P.3d at 523 ("Off[-]duty officers shall act in an official capacity if they observe an incident requiring police action . if such action will safeguard life[.]") (omission in original) (emphasis, internal quotation marks, and citation omitted)). Similarly, the benefit flowing to the police department from an off-duty officer's actions seems an attenuated basis on which to ground compensation where it is members of the public, specifically those receiving the police officer's assistance, who actually benefit from the officer's decision to take action.²

{14} While we recognize, in accordance with these cases, that regulations governing off-duty officer conduct can aid in determining the parameters of the compensability of an officer's off-duty injury, especially in circumstances where an officer is instructed not to act, we believe that an overly technical or singular focus on such provisions fails to account for the amount of discretion the public expects an off-duty officer to exercise in the face of a potential emergency. The immediacy of action often called for in such circumstances would hardly permit officers the time to consider whether they are obligated to act under their respective police department regulations and, thus, whether the circumstances would entitle them to compensation should they be injured. See City of Pittsburgh, 529 A.2d at 1197 ("[W]e would [be] loath to hold that [the] claimant should sit by idly while a fellow officer must fend for himself against a crowd of ruffians because he would go uncompensated if seriously injured because of his entry into a fracas."). Instead, police officers just act. Therefore, placing too much emphasis on often broadly worded regulations to support a finding of an attenuated benefit to the employer in order to fit the officer's actions into traditional workers' compensation jurisprudence, which was developed in accordance with more traditional employment environments, would dampen the reliance our society places on police officers to respond to circumstances in which we expect them to intervene. See Tighe v. Las Vegas Metro. Police Dep't, 877 P.2d 1032, 1035 (Nev. 1994) ("[T]he unique nature of law enforcement requires us to distinguish it from other types of traditional employment.").

{15} Instead, what we gather from these cases is an implicit recognition that the traditional interpretations of the "arising out of and in the course of employment" standard are inadequate benchmarks for determining whether an injured off-duty police officer is entitled to compensation. Given the unique nature of law enforcement duties and the various circumstances calling for the exercise of those duties, strict application of the "time, place, and circumstances" factors or attempts to delineate what risks off-duty police officers are likely to face incidental to their employment strains the function these factors have served in our workers' compensation law in other contexts. Therefore, we think it is necessary to reexamine our application of the "arising out of and in the course of employment" standard in the context of off-duty law enforcement officers injured while responding to circumstances that reasonably call for immediate police assistance.

Formulation of the Proper Inquiry

{16} Traditionally, the “arising out of” prong has looked to the causal connection between the risk giving rise to the injury and the worker's employment responsibilities. See Velkovitz, 1981–NMSC–075, ¶ 2. As noted above, construing this prong too narrowly would threaten to introduce unforeseen and potentially inequitable results due to the seriousness of the risks both on- and off-duty police officers encounter on a routine basis. However, given the small distinction between society's expectations of an on-and off-duty police officer faced with an emergency, the focus under this prong should be the nature of the incident in relation to risks generally faced by on-duty officers in which they would be expected to respond, albeit with due regard for those actions or circumstances in which an off-duty officer has been instructed not to act or intervene. This inquiry would therefore include a determination of the reasonable expectations of an on-duty officer confronted by the same or similar circumstances, regardless of whether an on-duty officer's responsibility to act would arise from statute, police department regulation, or a common sense expectation that the circumstances surrounding the incident necessitated a response.

{17} The “in the course of employment” prong, on the other hand, considers “the time, place, and circumstances under which the accident takes place.” *Id.* Similar to the “arising out of” requirement, traditional interpretations of the “in the course of employment” prong are difficult to apply to a type of employment that recognizes little distinction between the responsibilities of its on-duty and off-duty workers. It is therefore nearly impossible to formulate adequate parameters on the time, place, and circumstances factors sufficient to encompass the various occasions, locales, and circumstances where an off-duty officer's injury could take place and still entitle him or her to compensation.

{18} We believe that when determining a police officer's eligibility for injuries sustained in circumstances not traditionally arising from or in the course of predictable employment activities, the proper focus should be on the circumstances giving rise to the accident, specifically the nature of the officer's actions and the manner of their performance in relation to a similarly situated on-duty officer. That is not to say that some inquiry into the time and place of the accident is irrelevant. But given that the issue before us concerns an off-duty police officer, the “time” factor is of little analytic value insofar as this factor relates to injuries occurring on duty, where we have already concluded that police officers are entitled to recovery for off-duty injuries in some circumstances. See, e.g., *Municipality of Bethel Park*, 636 A.2d at 1255–56, 1259–60 (affirming the award of the compensation benefits where an officer suffered a heart attack after investigating a potential criminal activity during his vacation leave time). Furthermore, consistent with previously cited case law, we decline to place an explicit jurisdictional limitation on an off-duty police officer's entitlement to compensation. See, e.g., *Jordan*, 699 S.W.2d 12; *Luketic*, 730 N.E.2d 1006; *City of Pittsburgh*, 529 A.2d 1196; . We note, however, that the more attenuated the officer's law enforcement relationship to the jurisdiction in which the accident arises, the more relevant the place of the accident should become to the workers' compensation judge's conclusion. Nevertheless, the

relationship between the circumstances of the incident and the off-duty officer's response in relation to a similarly-situated on-duty officer should remain paramount.

{19} In sum, the “arising out of” and “in the course of employment” standard for injuries to off-duty police officers occurring in response to an incident that reasonably called for police assistance constitutes a case-by-case, pragmatic determination of the nexus between the nature of the incident giving rise to the accident and the resulting injury and the person's duties as a public safety officer. Stated generally, determining the connection between the incident and the employment is the goal of any “arising out of and in the course of employment” analysis. See 2 Arthur Larson & Lex Larson, *Larson's Workers' Compensation Law* § 29.0 (2012) (“In practice, the ‘course of employment’ and ‘arising out of employment’ tests are not, and should not be, applied entirely independently; they are both parts of a single test of work-connection[.]”). But given the unique expectation placed upon police officers to officially act while off-duty in some circumstances, we must recognize the various, and often serious, risks faced by police officers when fulfilling their broader duty to protect and serve the public. In our view, emergency actions that on-duty police officers would take in the course of their employment that are taken by off-duty police officers can be considered reasonably incidental to their employment responsibilities. Thus, to the extent our conclusion broadens the traditional construction of the arising out of and in the course of employment standard in this unique employment context, it does so in accordance with the “special, unpredictable[,] and emergency situations that are typical of police work[,]” *Pounds v. Board of Trustees of Fire and Police Disability and Retirement Fund*, 749 P.2d 1227, 1229 (Or.Ct.App.1988), and the recognition that police officers “are often under a continuous duty to protect the public, even when not at work.” *Davis v. United States*, 50 Fed. Cl. 192, 201 (2001).

Officer Schultz's Death Arose Out of and in the Course of His Employment

{20} Turning to the circumstances surrounding Officer Schultz's death, we conclude that there was a sufficient nexus between the incident—the rescue undertaken by Officer Schultz—and his duties as a public safety officer to support an award of compensation.

{21} The arising out of prong is satisfied here by the critical nature of the incident. The extent of a police officer's duty to protect and serve the public is not limited to crime prevention. See *Spieler*, 62 S.W.3d at 459–60 (“[T]he interdiction of felonies does not fully define the duty of police officers in providing protection to members of the public who need assistance, wherever they find them.”). Rendering assistance to a child in danger of drowning is among those risks to which common sense dictates that an on-duty officer faced with a similar circumstance would be expected to respond. Furthermore, we note that Officer Schultz was not prohibited by Employer regulations from undertaking the rescue in his official capacity. The regulations caution officers against acting outside their jurisdiction but state that an officer can initiate extra-jurisdictional action in “circumstances so serious that immediate action must be taken.” No one can seriously dispute that the circumstances giving rise to Officer Schultz's death required immediate action.

{22} Employer argues, however, that Officer Schultz's death was not in the course of his employment because he was acting outside the scope of his training in undertaking a swift-water rescue. Under the circumstances in this case, we reject Employer's argument to the extent that it asks this Court to second-guess Officer Schultz's decision to enter the water in order to save the child. There may be some circumstances in which a police officer's response to an emergency would be so incongruent with the expected response of a similarly situated on-duty officer as to remove the officer's actions from his or her "course of employment." This could be evidenced, in part, by deviations from police department regulations, training, or other specific instructions. But Officer Schultz's response does not fall into that category. Employer points us to no regulation that prohibits its police officers from taking action beyond their specific skill set. Rather, the regulations invest officers with discretion in their response to incidents and directs officers to "[a]ct promptly with energy, firmness, and decisiveness at . any situation requiring police attention."

{23} It is also apparent that for Officer Schultz to have taken any other action than to attempt to personally rescue the child would have been the equivalent of taking no action at all. Simply stated, notifying the proper authorities, especially dispatching persons with swift-water rescue skills, would likely have resulted in the child's death. Although there was conflicting testimony as to whether Officer Schultz could have been subject to discipline for not taking action that day, we note that the regulations consider "[c]owardice or failure to perform police duties because of danger" a dereliction of duty. Thus, we are confident that Officer Schultz exercised the same degree of discretion and decisiveness as would a similarly situated on-duty officer under the circumstances, despite his lack of swift-water rescue training.

{24} The WCJ focused on three key factors in concluding that Officer Schultz's death did not arise out of and in the course of his employment. The WCJ found it determinative that Officer Schultz had requested the day off and was not on call, that the accident was outside his jurisdiction, and that Officer Schultz was not in an area where his employment required him to be because the purpose of the trip was purely personal. We disagree that these factors preclude compensation in this case.

{25} First, although some courts have utilized an officer's "on-call" status as a basis for awarding compensation, Officer Schultz's status as not "on-call" is not determinative of the issue before us. Society generally expects an off-duty officer to act in circumstances reasonably calling for immediate police assistance when such matters come to his or her attention, unless specifically instructed to refrain from taking the action that led to the injury. See *Stebens v. K-Mart Corp.*, 1983-NMCA-044, ¶ 5, 99 N.M. 720, 663 P.2d 379 ("The fact that a worker, at the time of injury, was disobeying an instruction from his employer may, under some circumstances, deprive him of the right to compensation[.]"); see also *Tighe*, 877 P.2d at 1035 (stating that "police [officers] may be at any moment 'called' into duty by events taking place in [their] presence, whether or not [they] are technically off duty" (quoting 1 Arthur Larson, *Larson's Workmen's Compensation Law* § 16.17 (1993))). Depending on the circumstances, the officer's responsibility to act may involve the off-duty officer personally intervening or simply taking action to notify the proper

authorities. See *Spieler*, 62 S.W.3d at 458 (awarding compensation where an off-duty officer was injured while notifying the authorities of a car accident). Regardless of the officer's chosen means of intervening, an off-duty officer's decision to act in emergency matters coming to his or her attention, as opposed to the officer being dispatched in accordance with "on-call" status, is not ultimately conditioned on whether the officer was expected to be available to the employer for other emergencies and, thus, neither should the officer's ability to recover when the officer is injured in the course of personally initiating such action. Instead, the relevant inquiry when an off-duty officer chooses to respond to such an incident is that stated above-whether there is a nexus between the circumstances surrounding the officer's decision to act and the duties of the officer's employment.

{26} Second, it is not determinative that the accident occurred outside Officer Schultz's jurisdiction. See *Jordan*, 699 S.W.2d 124; *Luketic*, 730 N.E.2d 1006; *City of Pittsburgh*, 529 A.2d 1196. Employer has not directed us to a case in which this fact has been material to the court's determination. Arguably, whether a police officer is injured while acting outside his or her jurisdiction could be material when the police officer is acting in a law enforcement capacity without authorization to do so. See *Cooper*, 696 N.E.2d at 648 ("[G]iven [the worker's] statutory responsibility as a peace officer to stop crime, his 'place of employment' for law enforcement purposes reasonably could be viewed as anywhere he lawfully exercises his authority."). But that was not the case here. Officer Schultz took action in an emergency to rescue a child in need of immediate assistance and was authorized to do so by Employer's policies permitting off-duty and extra-jurisdictional action in "circumstances so serious that immediate action must be taken."

{27} Third, Officer Schultz's reason for being at the river and whether he had a personal motivation to undertake the rescue as a chaperone on the trip is similarly immaterial. See *Lane*, 178 P.3d at 521, 523 (noting the officer's testimony that he would have attempted to rescue his friends despite his employment as a police officer and concluding, "[W]e decline to hold that when an employee is injured under such circumstances, that injury becomes noncompensable merely because the worker may have taken the same action in the absence of the employment-related duty"). While we agree with the WCJ that other chaperones may have taken the same action as Officer Schultz, the fact is that it was Officer Schultz who undertook the rescue. It is not dispositive that an off-duty police officer may have both an official and a personal motivation in taking the action that led to the injury. See *id.* at 523.

{28} The WCJ's conclusion on this point highlights the inadequacy of strictly applying traditional workers' compensation factors to the exceptional duties of police officers. The WCJ stated that being a police officer may "bring with it a higher duty to act in an emergency . but that does not convert to one's being at work or in any place where their employer's business requires their presence anytime they take some emergency action." However, rarely will an off-duty officer facing an emergency be simultaneously in a location where "their employer's business requires their presence."³ It is the nature of emergencies that they are often unanticipated, and it is the nature of police work to render assistance when and

where the need arises. Strict application of this traditional analysis would thus defeat recovery in nearly every instance, and it would disregard the expectations of police departments and the public that some circumstances will call for an off-duty police officer's response regardless of why the officer is in the best position to provide the assistance.

{29} We therefore hold that Officer Schultz's death arose out of and in the course of his employment as an officer for Employer. If it is our expectation as a society that police officers put themselves in harm's way, sometimes irrespective of their on-duty status, then it should also be our expectation that such officers be compensated when they are injured in the course of doing so. See *Davis*, 50 Fed. Cl. at 208 ("The grave physical risks facing public safety officers are imminent whenever an officer is under a duty to take actions to protect the public. [T]he potential for physical risk pervades their daily lives, both on and off the clock. Placing officers under such a continuous duty with its inherent risks confers a significant benefit on society."). We caution, however, that our conclusion should not be construed as holding that all off-duty police officer injuries are compensable. We agree with the court in *Jordan*, which stated, "In a sense, a police officer is never off-duty. That does not mean, however, that a police officer is covered by the [w]orker[s] c[ompensation] [l]aw at all times regardless of the circumstances of the injury. There must be a correlation between the injury sustained and the employment." 699 S.W.2d at 126 (citations omitted). For instance, in appropriate circumstances, the traditional application of our "going-and-coming" rule will be the proper standard for analyzing the compensability of an off-duty officer's injury. See § 52-1-19; see, e.g., *Kunze v. Columbus Police Dep't*, 600 N.E.2d 697, 699-700 (Ohio Ct.App.1991) (holding that an off-duty police officer is not entitled to police officer exception to the "going-and-coming" rule when they are involved in an accident driving home). Similarly, our conclusion does not affect this Court's previous holding in *Meeks v. Eddy County Sheriff's Department*, 1994-NMCA-134, ¶ 14, 118 N.M. 643, 884 P.2d 534 (holding that the police officer was not entitled to the workers' compensation benefits "for suffering an injury from self-directed, off-duty athletic activity"). Instead, our holding is limited to emergency circumstances to which an off-duty law enforcement officer responds, providing those circumstances are the kind to which an on-duty officer would respond.

CONCLUSION

{30} For the foregoing reasons, we reverse the WCJ's judgment and remand for proceedings consistent with this Opinion.

{31} IT IS SO ORDERED.

FOOTNOTES

1. The WCJ also concluded that Cheryl's claim was barred by the statute of limitations. [RP 325] Discussion of the procedural issues related to Cheryl's complaint and initial appeal can be found in our Supreme Court's prior decisions in this case. See *Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't*, 2010-NMSC-

034, 148 N.M. 692, 242 P.3d 259; Schultz ex rel. Schultz v. Pojoaque Tribal Police Dep't, 2013-NMSC-013, --- P.3d ----.

2. We note that in some jurisdictions, a finding of a direct or indirect benefit to the employer or that the employee's actions at the time of the injury furthered the interests of the employer is a prerequisite to compensability. See, e.g., City of El Dorado, 729 S.W.2d at 431-32; Cooper, 696 N.E.2d at 644.

3. It is unclear whether the WCJ's use of this phrase was intended to reference a separate analysis under NMSA 1978, Section 52-1-19 (1987). To the extent that it does, we emphasize that the circumstances surrounding Officer Schultz's death did not warrant a "going-and-coming" analysis. Ramirez, 2000-NMCA-011, ¶ 7 (explaining that "workers injured while traveling between home and work are generally not eligible for compensation" (internal quotation marks and citation omitted)). Furthermore, New Mexico courts have long considered the phrases "while at work" and "in the course of employment" as synonymous, and we have already concluded that Officer Schultz's death occurred in the course of his employment. See Whitehurst v. Rainbo Baking Co., 1962-NMSC-126, ¶ 20, 70 N.M. 468, 374 P.2d 849; McKinney v. Dorlac, 1944-NMSC-017, ¶ 12, 48 N.M. 149, 146 P.2d 867.

FRY, Judge.

WE CONCUR: JONATHAN B. SUTIN, Judge, and J. MILES HANISEE, Judge.

Court: Pojoaque officer's widow entitled to benefits

http://www.santafenewmexican.com/news/local_news/court-pojoaque-officer-s-widow-entitled-to-benefits/article_1ab70b70-62b7-523f-8cb9-2f71c604cf28.html

August 20, 2013 AP

A New Mexico court has ruled that the widow of an off-duty tribal police officer who died more than a decade ago while rescuing a boy is entitled to workers' compensation benefits.

The decision by the state Court of Appeals was welcomed Tuesday by a lawyer for Cheryl Schultz, who has waged a long legal battle after a workers' compensation judge in 2007 rejected her claim for benefits involving the death of her husband, Kevin, a Pojoaque Pueblo police officer.

Kevin Schultz was fishing with a group of children from his church when a 12-year-old boy fell into the Rio Grande. After pulling the boy from the river, Schultz collapsed in shallow



Kevin Schultz

water and drowned. Schultz was a chaperon on the trip near the small community of Pilar, which is outside the boundaries of Pojoaque Pueblo lands.

Schultz may have hit his head on a rock, and the injury could have incapacitated him, according to a medical examiner.

In a ruling issued Monday, the Court of Appeals overturned a decision by the workers' compensation judge that Cheryl Schultz wasn't entitled to benefits because her husband wasn't performing the duties of his job when he died. The court said benefits will be provided for off-duty law-enforcement officers injured or killed in emergency situations "reasonably calling for police officer assistance."

"If it is our expectation as a society that police officers put themselves in harm's way, sometimes irrespective of their on-duty status, then it should also be our expectation that such officers be compensated when they are injured in the course of doing so," the court said in an opinion written by Judge Cynthia Fry.

George Weeth, a lawyer for Cheryl Schultz, said the decision expanded the state's legal framework for providing workers' compensation benefits for off-duty police.

"That is the policy that poor Cheryl has been trying to establish for 10 years now," Weeth said. "It's been a long road to get here."

He estimated that the widow and her son may be entitled to death benefits of about \$300,000, but said the final amount will be determined later by a worker's compensation judge. The family is entitled to payments for funeral expenses up to \$7,500 and some medical costs.

The case has been the subject of several appellate court rulings since the workers' compensation judge initially ruled that the widow's claim was filed too late and that her husband's death didn't happen in the course of his employment. The state Supreme Court twice revived the case after the Court of Appeals ruled against Cheryl Schultz.

Earlier this year, the Supreme Court said delays in the filing of the workers' compensation claim were caused by Kevin Schultz's employer, and the justices



Cheryl Schultz, the widow of Pojoaque Pueblo Officer Kevin Schultz, thanks Harry Herington, CEO of NIC, for making a donation to the C.O.P.S. organization in 2010. C.O.P.S. is a national organization that aids the families of police officers killed in the line of duty. Schultz's husband died more than a decade ago after rescuing a child who had fallen into the Rio Grande near Pilar. New Mexican file photo

ordered the appeals court to resolve the question of whether the officer's death occurred during his law-enforcement duties.

Responding to the call of duty: Win for a widow

<https://www.abqjournal.com/253340/responding-to-the-call-of-duty-win-for-a-widow.html>

August 26th, 2013 Updated: Tuesday, August 27th, 2013

ALBUQUERQUE, N.M. — Eleven years almost to the day since Pojoaque Pueblo police officer Kevin Schultz lost his life saving a drowning child, after three appeals and two hearings before the state Supreme Court, after days of doubt, nights of frustration and far too many tears, Cheryl Schultz's long court fight to obtain her husband's workers' compensation benefits came to an end last week.

She won.

After hearing the news from her attorney Tuesday, she posted a story about the favorable Court of Appeals opinion on Facebook and wrote simply: "It's over." But there was nothing simple about what Cheryl Schultz and her attorney, George Weeth, had been through.

"There were a couple of situations there when I was just done, I can't do this anymore," Schultz said. "It was exhausting."

Weeth, too, admits a couple of times he thought about quitting.

They didn't.

And it's a good thing. What they fought for will almost certainly benefit other families of fallen and wounded law enforcement officers both in New Mexico and elsewhere, because the Court of Appeals opinion practically shouts what many of us have felt all along: that an officer is not off the clock when he or she is needed to protect and to serve.

That had been at the crux of the biggest legal battle Cheryl Schultz had waged – though there were certainly others she faced since her husband's death Aug. 17, 2002. On that sunny Sunday, she and her husband were chaperons for a church



Kevin Schultz, a Pojoaque Pueblo police officer, and his wife, Cheryl Schultz, before he died Aug. 17, 2002. His wife has fought for workers' compensation benefits for him and other law enforcement officers killed in the line of duty, whether on or off the clock. (Courtesy of Cheryl Schultz)

outing on the upper Rio Grande near Pilar when a 12-year-old boy fell into the swirling waters.

Kevin Schultz, packing his service revolver, his badge and his pager as he did even on his days off, did not hesitate. He jumped in to save the boy, heaving the unconscious child onto the shore but unable to save himself. He was 44.

For his heroism, he received a number of posthumous honors, including the U.S. Coast Guard's Silver Lifesaving Medal and the Medal of Valor from Pojoaque Pueblo.

His name was engraved on both the New Mexico Department of Public Safety's memorial wall in Santa Fe and the National Law Enforcement Officers Memorial in Washington, D.C.

All those awards, all those officials – including Pojoaque Gov. George Rivera, then the pueblo's lieutenant governor – praised Kevin Schultz for his selfless act in the line of duty.

But when it came to workers' compensation benefits, well, no, suddenly his death did not "arise out of and in the course of" his job. Suddenly, Pojoaque Police Chief John Garcia (who, according to testimony, promised to file for the benefits but didn't), Workers' Compensation Judge Helen Stirling and New Mexico Mutual Casualty Co. were not convinced that Kevin Schultz's last heroic deed was "within the course and scope of his employment."

He was off-duty, they argued. He was outside his jurisdiction, not in uniform and hadn't even been trained to conduct a swift-water rescue.

All these years later, the Court of Appeals told them they were wrong.

"If it is our expectation as a society that police officers put themselves in harm's way, sometimes irrespective of their on-duty status, then it should also be our expectation that such officers be compensated when they are injured in the course of doing so," wrote New Mexico Court of Appeals Judge Cynthia Fry.

Weeth said the court's opinion is the first he is aware of in the country to broadly declare that officers who respond to an emergency while they are off duty should be treated as if they were on duty.

"Had Kevin checked a manual or called for backup or simply said, 'I'm off duty,' that child would not be alive today," he said.

Richard Shane, attorney for the Pojoaque police and New Mexico Mutual Insurance Co., declined to comment, saying he had not had time to digest the 26-page opinion and had not conferred with his clients.

Pojoaque Pueblo issued this statement: "Gov. Rivera has consistently supported the efforts of Cheryl to pursue workers' compensation benefits on behalf of her late

husband. The pueblo's insurance carrier has handled the claim and proceeded in accordance with our policy provisions. We are looking now at the court's decision.

Kevin's death greatly impacted the pueblo, most importantly the officers who served with him, and we believe his efforts to save a young boy from drowning were nothing short of heroic."

Garcia is no longer police chief.

I've been writing about Cheryl Schultz's battle since 2010, and each time she has made it clear that her fight was not about money (she stands to receive an estimated \$307,755, which will come in handy for a single mom with a son, Kaegan, now 19 and at the University of New Mexico).

"I wanted something that would help other families," said Schultz, now the Western regional trustee for Concerns of Police Survivors. "But I also wanted people to know that Kevin did not make a wrong choice by deciding to save somebody's life."

A couple of years ago, Schultz was offered what her attorney calls "real money" to quietly settle the case.

"All the pressure was on her to take the easy route, take some money," Weeth said. "But she had a bigger goal."

No one would have faulted her had she taken the money and run – except her.

"I had to do what could let me sleep at night," she said. "Taking that money wasn't right. Quitting wasn't right. The only option was to go forward, and that's what I did."

Which is to say that in the Schultz family, there are two heroes.

For Families of Fallen Officers, Grief Can Be Paired With Financial Hardship

<http://abcnews.go.com/Business/families-fallen-officers-grief-paired-financial-hardship/story?id=40703938>

Jul 19, 2016 BY PAUL BLAKE

Cheryl Schultz' husband Kevin had been dead for less than two weeks when she had knee surgery.

The timing wasn't an unfortunate coincidence, Schultz said it was intentionally scheduled so that she could have the surgery before she lost insurance coverage.



An American flag over a casket at a funeral.

Several days earlier, the couple and their children were spending a Saturday enjoying a picnic with members of their church near Pilar, New Mexico.

Nearby, a boy from the group that was fishing on the Rio Grande, dropped his tackle box and fell into the river while trying to retrieve it.

"It really looks like it's calm water," Schultz said. "But underneath there's undertow."

Kevin, an officer with the Pojoaque, New Mexico Police Department, sprang into action, entering the river and ultimately giving his own life to save the boy.

Like the death of fallen police officers across the country, Kevin's passing was emotionally devastating for the family. But it also raised a series of financial struggles that many families do not see foresee.

A federal program is available to the families of all fallen law enforcement officers and first responders who die in the line of duty -- the Public Service Officers' Benefits program (PSOB), administered by the U.S. [Department of Justice](#) -- that provides monetary compensation and educational benefits.

Though it can provide much-needed relief, the process of applying and waiting for benefits can take months or even years and many police departments don't have their own death benefits or pensions to provide for the families. In the meantime, the families can be left without any funds to cover living expenses.

"The immediate cash issues were horrible," said Cheryl, who is now the Western Region Trustee on the board of National Concerns of Police Survivors, or C.O.P.S., a group who assists and advocates on behalf of surviving families.

"I couldn't even cash his last check that they gave me," she said, noting complications with their joint account. She also quickly lost her health insurance, which was tied to Kevin's job.

Cheryl, who worked in a dentist's office, said that without her husband's income, she and her children were forced to move in with her pastor and his wife. She received "a small amount" from [social security](#) and relied on donations from her former church in Kansas.

Cheryl began the process of applying for relief from PSOB, but she struggled to make ends meet for nine months while she waited for her case to be approved.

The financial difficulty that Cheryl faced almost immediately after her husband's unexpected death are not unique for the families of fallen law enforcement officers, according to Sara Slone, spokesperson for C.O.P.S.

"The officers are the breadwinners," she told ABC News. "Just because they work such odd schedules -- a lot of times they work 12 hours a day -- a lot of times it's difficult for the spouse to even have a normal nine-to-five job."

According to Slone, the problems can range from paying for housing to everyday expense like food and school supplies or food.

The PSOB, she said, is "not an immediate benefit," and families "have to go through the process and sometimes it can take years," before they receive a payout.

A spokesperson for the Department of Justice said that "the goal is for all applications to be addressed within one year" but that "each case presents unique circumstances to document and approve."

[Data available on the program's website](#), says that in the fiscal year ending on September 30, 2014, the total number of death claims for "public safety officers" -- which include law enforcement officers, firefighters or chaplains working for a public agency -- was 319. During that same time frame, 88 percent of death claims were approved -- though some of these approvals may have been filed in an earlier fiscal year.

For eligible deaths of "public safety officers" that occur on or after October 1, 2015, the PSOB benefit is \$339,881.00, according to the website.

So far in 2016, 63 officers have died, a two percent increase on the number of deaths that had occurred at the same time in 2015, [according to the National Law Enforcement Officers Memorial Fund](#). The state of Texas has lost the highest number of officers -- 11 -- while Louisiana, which has lost the second highest amount, has lost seven.

The experience that families of fallen officers have can vary from department to department, however.

"Our officers do not face the hardship that other survivors do," said Ray Hunt, President of the Houston, Texas Police Officers Union.

According to Hunt, the families of fallen officers in Houston are paid the officer's salary by the pension system for the rest of their lives, which also makes sure they continue receiving health insurance at employee rates. Meanwhile, he says, a local charity pays off any outstanding debt that the officer may owe at the time of their death, and the state of Texas allows their children to attend state colleges for free.

"We have heard that this is not the case in other places," Hunt said. "It's tragic if they're not covered by a pension and if they're not protected the way we protect our police officers in Houston and in the state of Texas"

"I can only imagine what those folks who don't have the support we have in Houston are facing," he said.

Advocacy group helps Officer Jose Chavez's family deal with his death

<http://krqe.com/2016/08/19/advocacy-group-helps-officer-jose-chavez-s-family-deal-with-his-death/>

August 19, 2016, 9:57 pm Updated: August 20, 2016 By Candace Hopkins



LAS CRUCES, N.M. – A special advocacy group has stepped up, to help murdered Hatch Police Officer Jose Chavez's family deal with his death.

The group is called "COPS: Concerns of Police Survivors." It's made up of the loved ones of fallen officers, and their goal is to help families who have lost an officer navigate their new reality following that death.

Cheryl Schultz is a member of COPS. Her husband, Pojoaque Pueblo Officer Kevin Schultz, died in 2002 saving a drowning child.

"He saved a little boy and I will always be proud and honored to be his wife," said Schultz.

Schultz says the pain of losing her husband is still raw.

"These different chapters and these different life events that he's not here for, those are the ones that trigger the pain and the frustration."

It's pain Schultz says another family is now battling.

Schultz said, "My stomach just dropped when I got the call that he had passed away."

She's talking about Hatch Police Officer Jose Chavez, [shot to death during a traffic stop last week](#). As a widow, Schultz instantly felt grief but as a member of COPS, she felt something else: the need to reach out.

Schultz said, "You just want to keep them from hurting, anything you can."

COPS is now helping the Chavez family tackle challenges they may not have expected, like being in the spotlight as they try to grieve, and navigating the complicated benefits system. Schultz herself had to battle for more than a decade to get her husband's benefits, a struggle she doesn't want to see happen again.

Schultz said, "Just to make sure they know about deadlines, know about documents they need ahead of time, maybe work with a liaison so the family doesn't have to deal with a lot of this stuff."

When the family is ready COPS will send Chavez's children and other relatives to special retreats, where everyone has suffered a police officer loss.

"Allowing those children and those adults and those parents and siblings to just grieve and get tools at these retreats so that we know that we can process this stuff better," said Schultz.

The funeral for Officer Chavez will be held Sunday at the Pan American Center on the NMSU campus in Las Cruces at 3 p.m. It is open to the public.

KRQE News 13 will have a crew there. COPS says many of their members will also be in attendance.



<https://www.nationalcops.org/>

<https://www.facebook.com/nationalcops/>

Kevin Schultz

<http://www.lawcitations.com/case/n/kevin-schultz>

This name refers a person.

The name "Kevin Schultz" was found in the law cases below:

[I attest to the accuracy and integrity of this document New Mexico Compilation Commission, Santa Fe, NM '00'05 10:44:44 2014.02.06 IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO Opinion Number: 20...](#)

The content below is a snippet of the original case. [See the full text of the Law Case.](#)

I attest to the accuracy and integrity of this document New Mexico Compilation Commission, Santa Fe, NM '00'05 10:44:44 2014.02.06 IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO Opinion Number: 2014 NMCA 019 Filing Date: August 19, 2013 Docket No. 28,508 CHERYL **SCHULTZ** on behalf of **KEVIN SCHULTZ** (deceased), Worker Appellant, v. POJOAQUE TRIBAL POLICE DEPARTMENT, and NEW MEXICO MUTUAL CASUALTY COMPANY, Employer/Insurer Appellees. APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION Helen L. Stirling, Workers' Compensation Judge Academy Compensation Clinic, P.C. George Wright Weeth Albuquerque, NM for Appellant Riley, Shane & Keller, P.A. Richard J. Shane Kristin J. Dalton Albuquerque, NM for Appellees OPINION FRY, Judge. {1} In this workers' compensation case, the issue before us is whether Officer Kevin Schultz's accidental death arose out of and within the course of his employment with the Pueblo of Pojoaque Tribal Police Department (Employer). The workers' compensation 1 judge... "). Indeed, the lieutenant governor of the Pueblo of Pojoaque sent Cheryl a letter recognizing that "[y]our husband, **Kevin Schultz**, died in the line of duty" and that the "Pueblo of Pojoaque will do anything necessary for you to receive survivor's benefits...

[I attest to the accuracy and integrity of this document New Mexico Compilation Commission, Santa Fe, NM '00'05 15:18:14 2012.11.16 Certiorari Granted, January 30, 2012, No. 33,372 IN THE COURT OF APPE...](#)

The content bellow is a snippet of the original case. [See the full text of the Law Case.](#)

I attest to the accuracy and integrity of this document New Mexico Compilation Commission, Santa Fe, NM '00'05 15:18:14 2012.11.16 Certiorari Granted, January 30, 2012, No. 33,372 IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

Opinion Number: 2012 NMCA 015 Filing Date: December 6, 2011 Docket No. 28,508 CHERYL **SCHULTZ** on behalf of **KEVIN SCHULTZ** (deceased), Worker Appellant, v. POJOAQUE TRIBAL POLICE DEPARTMENT, and NEW MEXICO MUTUAL CASUALTY COMPANY, Employer/Insurer Appellees. APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION Helen L. Stirling, Workers' Compensation Judge Law Offices of George Wright Weeth George Wright Weeth Albuquerque, NM for Appellant Riley, Shane & Keller, P.A. Richard J. Shane Kristin J. Dalton Albuquerque, NM for Appellees OPINION FRY, Judge. 1 {1} During a recreational church outing, **Kevin Schultz** (Worker) drowned while rescuing a child who had fallen into the Rio Grande near Pilar, New Mexico. At the time of his death, Worker was an off duty police... to Mrs. **Schultz** stating, "Your husband, **Kevin Schultz**, died in the line of duty. The Pueblo of Pojoaque will do anything necessary for you to receive survivor's benefits, workmen's compensation or any other benefits available to you and your..."

[IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO Opinion Number: Filing Date: August 19, 2013 Docket No. 28,508 CHERYL SCHULTZ on behalf of KEVIN SCHULTZ \(deceased\), Worker Appellant, v. POJOAQUE TR...](#)

[Cheryl SCHULTZ on behalf of Kevin SCHULTZ \(deceased\), Worker-Petitioner, v. POJOAQUE TRIBAL POLICE DEPARTMENT, and New Mexico Mutual Casualty Company, Employer-Insurer-Respondents.](#)

[I attest to the accuracy and integrity of this document New Mexico Compilation Commission, Santa Fe, NM '00'04 14:07:45 2013.05.16 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO Opinion Number: 2013 ...](#)

The content bellow is a snippet of the original case. [See the full text of the Law Case.](#)

I attest to the accuracy and integrity of this document New Mexico Compilation Commission, Santa Fe, NM '00'04 14:07:45 2013.05.16 IN THE SUPREME COURT OF THE STATE OF NEW MEXICO Opinion Number: 2013 NMSC 013 Filing Date: April 11, 2013 Docket No. 33, 372 CHERYL **SCHULTZ** for **KEVINSCHULTZ** (deceased), Worker Petitioner, v. POJOAQUE TRIBAL POLICE DEPARTMENT, and NEW MEXICO MUTUAL CASUALTY COMPANY, Employer Insurer Respondents. ORIGINAL PROCEEDING ON CERTIORARI Helen L. Stirling, Workers' Compensation Judge Academy Compensation Clinic, P.C. George Wright Weeth Albuquerque, NM for

Petitioner Riley, Shane & Keller, P.A. Richard J. Shane Tiffany L. Sanchez Kristin J. Dalton Albuquerque, NM for Respondents OPINION BOSSON, Justice. {1} On August 17, 2002, Pojoaque Tribal Police Officer **Kevin Schultz** drowned while rescuing a twelve year old boy from the Rio Grande near Pilar, New Mexico. On the day of the accident, Schultz had taken the day off from work to chaperone a group of children 1 from...]our husband, **Kevin Schultz**, died in the line of duty. The Pueblo of Pojoaque will do anything necessary for you to receive survivor's benefits, workmen's compensation or any other benefits available to you and your grieving family." {45} These...