Hermanson, Kenneth, Dec'd

COVERAGE AND EXCLUSIONS

Extraterritorial

The enactment of RCW 51.12.120 regarding extraterritorial coverage did not abrogate the requirement that a worker be employed by an "employer" within the meaning of RCW 51.08.070. Thus, the extraterritorial coverage provisions do not apply unless the employer is engaged in doing business in this state.In re Kenneth Hermanson, Dec'd, BIIA Dec., 42,395 (1975)

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

IN RE: KENNETH A. HERMANSON, DEC'D) DOCKET NO. 42,395
)
CLAIM NO. G382732) DECISION AND ORDER

APPEARANCES:

Widow-Petitioner, Edith Hermanson, by Paine, Lowe, Coffin, Herman and O'Kelly, per Curtis Shoemaker

Employer, R. W. Reade and Company, None

Department of Labor and Industries, by The Attorney General, per John N. Lindsay, Assistant

This is an appeal filed by the widow-petitioner on March 29, 1973, from an order of the Department of Labor and Industries dated January 30, 1973, which denied a claim for a widow's pension filed by Edith M. Hermanson in behalf of herself and minor children, for the reason that "it has been determined that at the time of the fatal injury the Deceased was not covered under the provisions of the Workmen's Compensation Act of the State of Washington." **SUSTAINED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the widow-petitioner to a Proposed Decision and Order entered by a hearing examiner for this Board on November 26, 1974, in which the order of the Department dated January 30, 1973, was sustained.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The issue presented by this appeal and the evidence presented by the parties are very adequately set forth and discussed in our hearing examiner's Proposed Decision and Order.

We ratify and adopt the "Decision" portion of the hearing examiner's Proposed Decision and Order in its entirety. We believe it is very clear that the extraterritorial coverage section of the Washington Act, RCW 51.12.120, which was enacted by Sec. 82, Chap. 289, Laws of 1971 ex. sess., does not apply to this claim based on the 1972 fatal industrial injury in Montana, because the case fails to come under <u>any</u> subsections (a), (b), (c) or (d) of subsection (1) of RCW 51.12.120. The hearing examiner's decision completely sets forth the rationale for this conclusion.

We also believe there is a further basic reason why this claim does not fall within the purview of our Act's extraterritorial provisions.

The enabling provision of RCW 51.12.120 provides as follows:

"(1) If a <u>workman</u>, while working outside the territorial limits of this state suffers an injury on account of which he, or his beneficiaries, would have been entitled to compensation under this title had such injury occurred within this state, such <u>workman</u>, or his beneficiaries, shall be entitled to compensation under this title ..." (Emphasis supplied)

From the quoted provision it is apparent that before RCW 51. 12.120 can apply to an injury occurring outside our state, it must appear that the injured person was a "workman" within the meaning of our Workmen's Compensation Act. RCW 51.08.180 defines "workman," in pertinent part, as:

"...every person in this state who is engaged in the employment of <u>an</u> <u>employer under this title</u> ..." (Emphasis supplied)

In other words, to be a "workman" the decedent must have been engaged in the employment of an "employer" -- not just any employer, but an employer "under this title," i.e., Title 51, RCW. RCW 51.08.070 defines an "employer" as:

"...any person, body of persons, corporate or otherwise, and the legal representatives of a deceased employer, <u>all while engaged in this state</u> in any work covered by the provisions of this title, by way of trade or business, or who contracts with one or more workmen, the essence of which is the personal labor of such workman or workmen." (Emphasis supplied)

R. W. Reade and Company is a painting contractor and is a California corporation. It does not appear that it has any office, branch, or work-place in the State of Washington for transaction of business in this state; although, according to the testimony of the business manager of the Spokane local of the Painter's Union, it had done some work in Washington at some non-specified time in the past. Certainly, the place of business at which this decedent was to perform his entire work for the employer was out-of-state, to wit, Montana. In other words, the employer, R. W. Reade and Company, was not engaged in business in this state during the time in question, and the decedent's fatal injury was not sustained in the course of any work incidental to any business conducted by the employer in this state.

Since R. W. Reade and Company was not engaged in business in this state and was therefore not an "employer" as defined by RCW 51.08.070, <u>supra</u>, the decedent was not a "workman" as defined by RCW 51.08.180, <u>supra</u>. Accordingly, the provisions of RCW 51.12. 120, prescribing extraterritorial coverage for a "workman," have no application to the decedent. This view of a basic coverage requirement, i.e., that the employer involved be an employer subject to our Act by reason of being engaged in business <u>in this state</u> which is covered by the Act, is a common thread which runs through the four decisions of our Supreme Court touching the subject of extraterritorial coverage; and it is also a common thread running through all of this Board's prior decisions relating to this issue. This requirement was in no way abrogated by the 1971 enactment of the specific section dealing with extraterritorial coverage, since the long-standing definition of an employer subject to our Act., i.e., one "engaged in this state," was not amended in this respect by the 1971 legislation.

FINDINGS OF FACT

Based upon the record, the Board makes the following findings:

- 1. On October 2, 1972, Kenneth A. Hermanson sustained a fatal injury during the course of his employment as a painter for R. W. Reade and Company, while working on Libby Dam in the State of Montana. On December 21, 1972, Edith Hermanson, surviving widow of Kenneth A. Hermanson, filed a claim with the Department for widow's and children's benefits under the Workmen's Compensation Law of the State of Washington. On January 30, 1973, the Department of Labor and Industries issued an order rejecting the widow's claim for benefits. On March 29, 1973, Edith Hermanson, widow-petitioner herein, filed a notice of appeal, and on April 17, 1973, the Board issued an order granting the appeal.
- Appellate proceedings were conducted before the Board, and on November 26, 1974, a hearing examiner for the Board entered a Proposed Decision and Order in connection with this appeal. Thereafter, within the time allotted by law, a Petition for Review was filed and the case referred to the Board for review pursuant to RCW 51.52.106.
- 3. Edith Hermanson, widow-petitioner herein, applied for and is receiving benefits under the Workmen's Compensation Law of the State of Montana, based on the deceased's fatal injury of October 2, 1972.
- 4. On or about September 28, 1972, the deceased, Kenneth hermanson, secured employment to work at the Libby Dam jobsite in Montana through the local Spokane painters' union on referral from the Kalispell, Montana, painters' union, which latter union had jurisdiction over the

- Libby Dam site. This employment was expected to last a duration of three weeks and all of such employment was to be performed in R. W. Reade and Company's painting operation at the Libby Dam jobsite in Montana.
- 5. In hiring the decedent for work on the Libby Dam site, Montana, the Spokane Painter's Union was effectively acting as the agent of R. W. Reade and Company, and the contract of employment was consummated in the State of Washington.
- 6. At the time of his death, the decedent, Kenneth A. Hermanson, was a resident of the State of Washington.
- 7. R. W. Reade and Company is a California corporation, and during the time in question was not engaged in any business in the State of Washington.
- 8. The decedent's fatal injury of October 2, 1972, was not sustained in the course of any work incidental to any business conducted by the employer in the State of Washington, but rather, was sustained during the course of business being conducted by the employer in the State of Montana.

CONCLUSIONS OF LAW

Based upon the foregoing findings, the Board makes the following conclusions:

- 1. The Board has jurisdiction of the parties and the subject matter of this appeal.
- 2. The employer, R. W. Reade and Company, was not an employer within the contemplation of the Washington Workmen's Compensation Act.
- 3. The provisions of RCW 51.12.120, prescribing the circumstances under which there may be extraterritorial coverage of the Washington Workmen's Compensation Act, do not apply to this claim based on the deceased's fatal injury in Montana.
- 4. The order of the Department of labor and Industries dated January 30, 1973, rejecting this claim for benefits under the Workmen's Compensation Act of the State of Washington, is correct, and should be sustained.

It is so ORDERED.

Dated this 4th day of June, 1975.

BOARD OF INDUSTRIAL INSURANCE APPEALS s/	
PHILLIP T. BORK	Chairman
/s/	
R.M. GILMORE	Member
/s/	
SAM KINVILLE	Member