Redman, Harold

COURSE OF EMPLOYMENT (RCW 51.08.013; RCW 51.08.180(1))

Parking area exclusion (RCW 51.08.013)

A road which provides access to a parking lot and which is also used for the delivery of materials to the employer's plant is not a "parking area". The exclusion of RCW 51.08.013 is therefore inapplicable to an injury sustained by a worker walking on that portion of the employer's jobsite. ....In re Harold Redman, BIIA Dec., 43,902 (1975) [dissent]

Scroll down for order.
BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: HAROLD W. REDMAN ) DOCKET NO. 43,902
CLAIM NO. G 530857 ) DECISION AND ORDER

APPEARANCES:

Claimant, Harold W. Redman, Pro se

Employer, Simpson Timber Company, by
Ryan, Bush, Swanson & Hendel, per
David H. Oswald, and Howard Curtis, Safety Supervisor

Department of Labor and Industries, by
The Attorney General, per
Joseph A. Albo, Assistant

This is an appeal filed by the employer on April 3, 1974, from an order of the Department of Labor and Industries dated March 15, 1974, which adhered to prior orders dated January 23, 1974, February 8, 1974, and March 1, 1974, allowing the claim and awarding time loss compensation.

SUSTAINED.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on timely Petitions for Review filed by the claimant and the Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on August 28, 1974, in which the order of the Department dated March 15, 1974, was reversed, and the claim remanded to the Department with direction to reject the claim as not coming under the purview of the Workmen's Compensation Act due to the exclusion of injuries occurring in "parking areas" as contained in RCW 51.08.013.

We do not agree with the hearing examiner's proposed disposition of this matter. As we view the facts, they are as follows:

At all pertinent times herein the claimant was employed as a maintenance worker, more accurately described as a millwright, by the Simpson Timber Company is Shelton, Washington. He reported for work each morning at a building on the employer's premises in which his maintenance shop was located, referred to as the Veneer Plant, which was L-shaped. A marked roadway skirted the ends of this building in such a manner as to carve out a roughly triangular piece of land which was bounded by the marked roadway on the longest side of the triangle, with the other two sides of
the piece of land being the two walls of the building forming the inside angle of the "L". An unmarked L-shaped roadway ran parallel to the sides of the building within the triangle. The rest of the triangular piece of ground consisted of: a parking area for cars belonging to the maintenance employees, which was marked into stalls by the use of yellow lines; some parking stalls marked off with yellow lines and situated against one wall of the building itself, for use of supervisory personnel; and an area against part of the other wall of the building, used for storage of materials and scrap junk. In order to enter the Veneer building from the parking stalls, the employees were required to walk across or along the unmarked roadway.

Shortly prior to the start of his work-shift on December 19, 1973, the claimant parked his car in the parking area designated for maintenance employees, and was then struck and injured while walking in the unmarked roadway heading for the door into the Veneer Plant. At the time, he was some 50 to 60 feet from the door entering the building. He was injured by a vehicle driven by another employee of Simpson Timber Company, but that employee did not work in the Veneer Plant and thus presumably would not have been parking his car in the area here involved.

The specific question before us is whether the claimant was in a "parking area" when he sustained his injury. If he was in a "parking area" at the time he was injured, his claim for benefits must be denied by reason of the exclusion of "parking areas" in RCW 51.08.013. If he was not then in a "parking area", allowance of his claim was proper since all other elements of coverage are admittedly met.

The record establishes that the unmarked roadway where the claimant was injured was used not only by company employees in going to and leaving work in the Veneer Plant, but was also used by other people in delivering material and supplies to and from the Veneer Plant. This included other employees of Simpson using company vehicles, as well as employees of motor freight companies using common carrier trucks, and other non-Simpson service vehicles. There is no evidence from which we can determine what proportion of the use of this unmarked roadway was by the employees of the company in gaining ingress and egress to their parking areas at the beginning and end of their work-shifts, as opposed to its use by others in connection with regular business and production processes. However, it is apparent that it was used by vehicles delivering materials and supplies, and for other services, on a regular basis. We can assume that if there had been no parking area within the triangle, the roadway area would still have been used for delivering materials to the building and for other production purposes, as well as by other service vehicles.
We do not agree with the hearing examiner's view that the unmarked roadway was used generally for parking purposes and that this was its "principal function." This was a multi-purpose area, and we do not think it is correct to state that the unmarked roadway's principle function was as a "lane" in connection with parking of employees' cars in their designated stalls. On this point, the employer's witness, general safety supervisor for Northwest operations, conceded that, among other uses, the unmarked roadway was a fire lane and thus "would not be a designated parking area."

We do not feel the Supreme Court's decision in Olsen v. Stern, 65 Wn. 2d 871, is of any controlling effect here, because of what we deem to be substantially different facts. We conclude that the claimant in the instant case was not in a "parking area" when injured, but was going to work on the company's premises outside of a parking area. The Department was correct in allowing this claim.

**FINDINGS OF FACT**

After a careful review of the record, the Board finds as follows:

1. On December 19, 1973, the claimant, Harold W. Redman, sustained injuries to his left leg and back, requiring medical treatment, when struck by an automobile operated by a fellow employee on a roadway on the premises of the Simpson Timber Company, the employer herein. On December 27, 1973, the claimant filed a report of accident with the Department of Labor and Industries, and on January 23, 1974, the Department entered an order awarding time-loss compensation to the claimant. On February 19, 1974, the employer, Simpson Timber Company, protested the allowance of the claim. On March 15, 1974, the Department issued a further order adhering to the previous order and allowed the claim. On April 3, 1974, the employer filed a notice of appeal with this Board, and on April 12, 1974, the Board entered an order granting the appeal.

2. At all pertinent times herein, the claimant was employed as a millwright by the Simpson Timber Company in Shelton, Washington, and was required to report to work each morning at the Veneer Plant, an L-shaped building on the employer's premises. The company had set aside a small piece of land near the Veneer Plant to be used as a parking area by millwrights and maintenance personnel. This area was marked off into stalls by the use of yellow lines.

3. Between the marked parking area and the veneer Plant, there was an unmarked roadway that paralleled the two sides of the building on the inner sides of its "L" shape, and was adjacent to the parking area. This roadway was used by employees of the company, of which the claimant was one, in order to gain ingress and egress to their parking area. The
same roadway was used by trucks and cars delivering materials and supplies to and from the Veneer Plant and was also used by vehicles providing services for the Veneer Plant. Materials and supplies were delivered to the Veneer Plant on a regular basis. These vehicles were both Simpson Timber Company vehicles, and vehicles of common carrier motor freight lines as well as other service vehicles.

4. On December 19, 1973, the claimant arrived for work at the Veneer Plant, parked his vehicle in a marked stall, in the area provided for his use, and then was struck and injured on the unmarked roadway, by a vehicle driven by a fellow employee, while walking toward the door going into the Veneer Plant building, where he punched in and performed his millwright duties.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes as follows:

1. This Board has jurisdiction of the parties and the subject matter of this appeal.

2. The claimant was injured on the "jobsite" on December 19, 1973, as such term is defined in RCW 51.32.015 and RCW 51.36.040.

3. At the time that the claimant was injured on December 19, 1973, he was not in a "parking area" as defined by RCW 51.08.013, and thus he was acting in the course of his employment at the time of said injury.

4. The order of the Department dated March 15, 1974, allowing this claim, is correct and should be sustained.

It is so ORDERED.

Dated this 28th day of August, 1975.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
PHILLIP T. BORK Chairman

/s/
SAM KINVILLE Member

DISSENTING OPINION

On the facts of this case, I would affirm the hearing examiner's Proposed Decision and Order.

I have carefully considered all of the testimony, together with all of the exhibits, and am convinced that Mr. Redman suffered his injuries in the area adjacent to the Veneer building used for car-parking purposes. I believe that the claimant was injured at a place which was within the
designated parking area, and he was therefore not in the course of his employment at the time of injury.

Dated this 28th day of August, 1975.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
R. M. GILMORE                Member