Henneman, Clayton

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

Dual purpose doctrine

When a trip has concurrent business and personal purposes, the worker is in the course of his employment when he is injured during the trip. The business purpose need not be the primary cause of the trip. It is sufficient if someone at some time would have had to make the trip to carry out the business mission.In re Clayton Henneman, BIIA Dec., 55,132 (1980)

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS STATE OF WASHINGTON

IN RE: CLAYTON E. HENNEMAN) DOCKET NO. 55,132)
CLAIM NO. H-390813) DECISION AND ORDER

APPEARANCES:

Claimant, Clayton E. Henneman, by Castelda and Eeckhoudt, per Roger Castelda

Employer, Rendezvous Restaurant, by Betty J. Henneman

Department of Labor and Industries, by The Attorney General, per Richard Roth and Jane Fantel, Assistants

This is an appeal filed by the claimant on February 20, 1979, from an order of the Department of Labor and Industries dated February 1, 1979, which rejected the claim for the reason that the claimant was not in the course of his employment at the time of his accident. **REVERSED AND REMANDED**.

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 Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on January 22, 1980, in which the order of the Department dated February 1, 1979 was reversed, and the claim remanded to the Department of Labor and Industries with direction to accept the claim.

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 general nature and background of this appeal are as set forth in the hearing examiner's Proposed Decision and Order and shall not be reiterated herein.

The Department acknowledges that the case is governed by the dual-purpose rule. This rule was honed and formularized by Judge Benjamin Cordozo in the landmark case of <u>Marks'</u> Dependents v. Gray, 251 N.Y. 90, 167 N.E. 181 (1920), as follows:

"...We do not say that service to the employer must be the sole cause of the journey, but at least it must be a concurrent cause. To establish liability, the inference must be permissible that the trip would have been made though the private errand had been cancelled... The test in brief is this: If the work of the employee creates the necessity for travel, he is in the course of his employment, though he is serving at the same time some purpose of his own... If, however, the work has had no part in creating the necessity for travel, if the journey would have gone forward though the business errand had been dropped, and would have been cancelled upon failure of the private purpose, though the business errand was undone, the travel is then personal, and personal the risk."

On review before the Board, it is the Department's position that under the dual-purpose rule, the claimant must show that the business purpose, -- i.e., the visit with his banker -- was the "primary" purpose of the trip in order for a compensable claim to obtain.

This contention is conclusively answered and, to our mind, laid to rest by Professor Arthur Larson in his treatise on Workmen's Compensation, to wit at Section 18.13, Volume 1, as follows:

"It is inaccurate and misleading to call this test, as sometimes has been done, the 'dominate purpose' test, or to paraphrase it by saying that the trip is a business trip if the 'primary' purpose is business. Cardozo used no such language. He said it was sufficient if the business motive was a concurrent cause of the trip. He then defined 'concurrent cause' by saying that it meant a cause which would have occasioned the making of the trip even if the private mission had been canceled. One detail must be stressed to make this rule complete: it is not necessary, under this formula, that, on failure of the personal motive, the business trip would have been taken by this particular employee at this particular time. It is enough that someone sometime would have had to take the trip to carry out the business mission. Perhaps another employee would have done it; perhaps another time would have been chosen; but if a special trip would have had to be made for this purpose, and if the employer got this necessary item of travel accomplished by combining it with this employee's personal trip, it is accurate to say that it was a concurrent cause of the trip, rather than an incidental appendage or afterthought." (Emphasis Larson's.)

Under the evidence, there can be no question but what the negotiation of a loan extension by the claimant with his banker was a critical item of business. It went to the very survival of the claimant's restaurant. The testimony of Mr. Dan P. Daigle, the claimant's banker, establishes that it is the preferred and normal practice of the bank to re-negotiate loans only through person to person contact in the bank's offices, and that the only reason the claimant was ultimately able to renegotiate his loan by phone and mail was because of his hospitalization and immobilization from the car accident herein. In other words, but for the car accident and the claimant's unavailability

therefrom, he would have had to travel from Seattle to his bank in Tonasket at some time sooner or later in order to secure an extension of his loan agreement with the bank.

At the time of the accident, the claimant was covering the same distance along the same route that he would have traveled had the trip been undertaken at any other time and had the business with his banker been the sole cause or purpose of the travel.

All told, we hold that the hearing examiner correctly applied the dual-purpose rule to the factual situation presented by this appeal, and that the claim herein is compensable.

The findings and conclusions of the Proposed Decision and Order entered herein are hereby adopted by the Board and incorporated herein by this reference.

It is so ORDERED.

Dated this 14th day of August, 1980.

/s/	
MICHAEL L. HALL	Chairman
/s/	
SAM KINVILLE	Member

BOARD OF INDUSTRIAL INSURANCE APPEALS

FINDINGS OF FACT

CONCLUSIONS OF LAW