Dickey, Cathy

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

Parking area exclusion (RCW 51.08.013)

A worker injured while coming from a parking area was injured on the "jobsite" since the area in which the injury occurred was owned, operated and controlled by the employer, was the only practical route to the employer's plant, was used for purposes in addition to employee parking, and presented particular hazards likely to produce injury. ***….In re Cathy Dickey*, BIIA Dec., 64,560 (1984)** [dissent] [*Editor's Note*: The Board's decision was appealed to superior court under Benton County Cause No. 84-2-00625-8.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: CATHY M. DICKEY	)	**DOCKET NO. 64,560**
	)	
CLAIM NO. H-969398	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Cathy M. Dickey, by
Shea, Kuffel and Lindsay, per
John Lindsay

Employer, Sandvik Special Metals Corp., by
Bogle and Gates, per
Douglas Mooney

Department of Labor and Industries, by
The Attorney General, per
Maureen Mannix and Laurie Connelly, Assistants

This is an appeal filed by the claimant on April 7, 1983, from an order of the Department of Labor and Industries dated February 4, 1983. The order adhered to the provisions of a prior Department order dated June 14, 1982, which rejected the claim for the reason that the claimant's injury occurred in a parking area, and, in accordance with RCW 51.08.013, was not covered under the Industrial Insurance Laws. The Department order is reversed and the claim is **REMANDED**.

PROCEDURAL STATUS AND EVIDENTIARY RULINGS

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 claimant to a Proposed Decision and Order issued on December 30, 1983, in which the order of the Department dated February 4, 1983 was sustained.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. Said rulings are hereby affirmed.

ISSUES

The issues presented for resolution in this appeal are: (1) Whether the claimant's appeal from the department's order of February 4, 1983 was timely filed; and (2) Assuming an affirmative answer to the first issue, whether the claimant's injury occurred in a "parking area" or on the employer's "job site".

DECISION

The evidence presented by the parties is quite adequately set forth in the Proposed Decision and Order, and will not be reiterated in detail here. Concerning the timeliness of Ms. Dickey's notice of appeal, we note that no challenge is made to the determination in the Proposed Decision and Order that the appeal was timely filed. Therefore, pursuant to WAC 296-12-145(2), the parties are "deemed to have waived all objections" to the decision that the notice of appeal received by the Department on April 7, 1983, was filed within sixty days of the date on which the contents of the Department order of February 4, 1983 were first communicated to Ms. Dickey. Such communication, per undisputed evidence, occurred on February 7, 1983.

Review has been granted because we cannot agree with the proposed determination that Ms. Dickey was injured in a parking area not occupied or used by the employer for any business or work process. In our judgment, the claimant slipped and fell on the employer's "jobsite" as defined in RCW 51.32.015 and RCW 51.36.040.

Where an area in which employees may park is also regularly used by the employer for the work process, the area falls within the contemplation of the legislative definition of "jobsite". Taylor v. Cady, 18 Wn. App. 204 (1977). Moreover, where said parking area lies "a relatively short distance outside what otherwise might be deemed work area actually controlled by the employer", it is likewise properly seen as the employer's "jobsite". In re Hamilton, 77 Wn. 2d 355, 363 (1969).

In this case, the evidence shows that Ms. Dickey was injured immediate to the time of work, while she was in the process of coming from an implicitly employer-designated parking area. The distance the claimant traversed was relatively short through an area owned, controlled and operated by the employer. The route Ms. Dickey used on the date of her injury was the only practical, proximate and customarily used route, which route contained particular hazards (namely "dangerous and pervasive potholes") likely to produce injuries. Indeed, the evidence establishes that the aforementioned hazards did, in fact, produce the claimant's injuries, and that the hazards were not shared by members of the general public. Under these circumstances, we hold that in re Hamilton, supra, represents the applicable law. There the court said:

> "We are convinced that the legislature did not intend to exclude from...industrial insurance coverage an employee injured, immediate to the time of work, while in the process of going to or from an employer-designated parking area, lying a relatively short distance outside what otherwise might be deemed work areas actually controlled by the employer, over and along the only practical, proximate and customarily

> used route, which route, under given circumstances, contained particular hazards likely to produce injuries and which hazards were not a kind commonly shared by the general public."

The Hamilton court went on to hold that:

> "The route which an employee is required to traverse, with the knowledge if not the express direction of the employer, to reach his or her actual worksite falls within the contemplation of the legislative definition of 'jobsite' as the premises 'used' by the employer for the employer's business or work process and that in pursuing such a route the employee is 'acting in the course of employment' within the intent of RCW 51.08.013.

In accordance with the foregoing, we conclude that Ms. Dickey was acting in the course of her employer on January 7, 1982, when she sustained injuries from a fall which occurred on the employer's jobsite. Accordingly, it was improper for the Department to exclude Ms. Dickey from industrial insurance coverage. After consideration of the Proposed Decision and Order and the Petition for Review filed thereto, and a careful review of the entire record before us, we hereby enter the following:

FINDINGS OF FACT

1. On June 13, 1982, Cathy M. Dickey filed an application for benefits with the Department of Labor and Industries alleging she sustained an industrial injury during the course of her employment with Sandvik Special Metals Corporation on January 7, 1982. By order dated June 14, 1982, the Department rejected the claim for the reason that the injury occurred in a parking area and was not covered under the Industrial Insurance Laws, in accordance with RCW 51.08.013. On July 13, 1982, the claimant filed a protest and request for consideration of the Department's June 14, 1982 reject order. On August 13, 1982, the Department issued an order holding its reject order in abeyance pending further consideration. On February 4, 1983, the Department issued an order adhering to the provisions of its June 14, 1982 reject order, and on April 5, 1983, the claimant mailed a notice of appeal to the Department. The Department received the claimant's notice of appeal on April 7, 1983, and forwarded same to the Board of Industrial Insurance Appeals on April 15, 1983. On May 16, 1983, the Board issued its order granting the appeal subject to proof of timeliness, assigned it Docket No. 64,560 and directed that proceedings be held on the issues therein contained.

2. The contents of the order of February 4, 1983, were first communicated to Cathy M. Dickey on February 7, 1983.

3. On January 7, 1982, immediately prior to beginning her shift as an Inspector III for Sandvik Special Metals Corporation, Cathy M. Dickey

parked her truck in an employee parking area and proceeded over and along the only practical, proximate and customarily used route leading to the inspection area of the employer's plant. When she reached a spot adjacent to the rear of her vehicle, claimant Dickey slipped on ice in a chuckhole and fell, sustaining injuries to her right thigh.

4. Although the immediate area in which the injury occurred was used as an area for employee parking, the area is a relatively short distance outside work areas actually owned, controlled and operated by the employer in furtherance of his business and is also used as an area of ingress and egress to the employer's shipping docks, and which contained particular hazards which were not of a kind commonly shared by the general public, and which were likely to and did produce injuries to the claimant.

CONCLUSIONS OF LAW

1. The claimant's appeal from the Department order of February 4, 1983 was timely filed.
2. The Board of Industrial Insurance Appeals has jurisdiction of the parties and subject matter of this appeal.
3. The claimant's injury of January 7, 1982 occurred while she was in the course of her employment within the intent of RCW 51.08.013, and constitutes an industrial injury as defined in RCW 51.08.100.
4. The order of the Department of Labor and Industries dated February 4, 1983, rejecting the claim is incorrect, should be reversed, and this claim remanded to the Department with instructions to allow the claim as an industrial injury, and take further action as indicated or required.

It is so ORDERED.

Dated this 30th day of May, 1984.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/

MICHAEL L. HALL Chairman

/s/

FRANK E. FENNERTY, JR. Member

DISSENTING OPINION

I disagree with the Board majority's decision, because it has managed to avoid the clear legislative intent that injuries to employees occurring in "parking areas," even though such areas are on or within the employer's "jobsite," are not covered by the Act.

The case of Taylor v. Cady, cited in the majority's opinion, makes it clear, of course, that if the employees presence in the parking area is itself at the employer's direction or in furtherance of

the employer's business, then coverage would obtain. That is not the case here, however. Ms. Dickey had simply arrived on the employer's premises shortly prior to the start of her work shift, parked her vehicle in an accustomed place in a graveled parking area, and had moved only a short distance to where she slipped on ice in a chuckhole adjacent to the rear of her vehicle. This injury site was still, clearly, part of the "parking area." It was not part of the jobsite which was otherwise used by the employer for its business or work process.

The case of In re Hamilton, relied on heavily by the majority, in my opinion has no application to this case, because the facts in Hamilton are so much different. Specifically, the injury situs in Hamilton was simply not in a parking area.

Our industrial appeals judge's Proposed Decision and Order analyzed the case thoroughly and correctly by the language, which I quote:

> "In the instant case, the claimant was injured while coming to work on the jobsite immediate to the actual time that she would be engaged in the work process. The outcome of the case turns on whether the claimant was injured while in a parking area, which the Legislature expressly excluded from coverage. The testimony is undisputed that the graveled area adjacent to the south fence of the jobsite was being used at the time of the injury as a parking area for employees. The employer may not have specifically designated it as a parking area but is acquiesced in its use. Certain areas of this graveled area were used for the work process of the employer, both for the storage of materials and as a transit path for trucks and forklifts. If the claimant had been in one of these areas when injured, she would be entitled to benefits. However, the claimant's testimony establishes that she was adjacent to the rear of her truck when she fell. An examination of Exhibit 1 shows that this point was south of the section of the graveled area traversed by the trucks and forklifts. There is no indication that the immediate area of the accident was used by the employer for storage. On the contrary the evidence establishes that the graveled area adjacent to the south boundary fence was used as a parking area. As the Legislature expressly precluded parking area injuries sustained while coming and going to work from coverage, the Department order rejecting the claim should be sustained.

I concur. I would affirm the Department's rejection order of February 4, 1983.

Dated this 30th day of May, 1984.

/s/

PHILLIP T. BORK Member