Rivkin, Carol

INJURY (RCW 51.08.100)

Normal bodily movement

A normal bodily movement must be in response to the requirements of the job for any resulting injury to be compensable. Therefore, a secretary who breaks a tooth while eating popcorn on the job has not sustained an "injury" under RCW 51.08.100. ***….In re Carol Rivkin*, BIIA Dec., 85 1694 (1986) [***Editor's Note*: *Overruled, In re Philip Carstens, Jr.*, BIIA Dec., 89 0723 (1990).]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: CAROL A. RIVKIN	**)**	**DOCKET NO. 85 1694**
	)	
CLAIM NO. J-581556	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Carol A. Rivkin, Pro se

Employer, Stafford, Frey & Mertel, by
Ruth Gamasche, Legal Intern (withdrawn)

Department of Labor and Industries, by
The Attorney General, per
John R. Wasberg, Assistant

This is an appeal filed by the claimant on July 5, 1985 from an order of the Department of Labor and Industries dated May 30, 1985, which rejected the claim for the reason that the claimant's condition was not the result of an industrial injury as defined by the Industrial Insurance Laws. **AFFIRMED**.

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 on November 19, 1985 in which the order of the Department dated May 30, 1985 was reversed, and the claim remanded to the Department with direction to accept the claim and thereafter to take such action as is indicated or required by law.

The issue: Does a broken tooth sustained on the job by an employee from chewing popcorn supplied by the employer as a job amenity qualify as an "injury" under the Act?

As noted by the parties and recognized by the Proposed Decision and Order, two cases appertain, to wit, Flynn v. Department of Labor and Industries, 188 Wash. 346 (1936), and Longview Fibre v. Weimer, 95 Wn. 2d 583 (1981). These cases are not inapposite; Weimer does not overrule the principle of Flynn; and the rule of law which emerges from the holdings in these two cases taken together, may be stated as follows: A physical condition which results solely from the performance of a normal bodily function or movement does not qualify as an "injury" under the Act (Flynn), unless such normal bodily function or movement was made in response to a requirement of the job (Weimer).

In Flynn, the normal bodily functions consisted of breathing and swallowing tobacco, neither of which had any direct relationship to the job, and the claim of injury for a fatal heart attack resulting

from those functions was disallowed. In Weimer, where a claim for back injury was allowed, the normal bodily movement consisted of bending over. This movement, however, as the court expressly noted, was made "in response to a requirement of the job" (to pick up a metal strap). Weimer, at page 589. This "job requirement" element was further emphasized in Weimer by quotations from Boeing Co. v. Fine, 65 Wn. 2d 169 (1964), about the bodily movement being "required by the job" or "in answer to the demands of the job."

In the case at hand, the claimant, Ms. Rivkin, was a law firm employee -- she was not employed as a food or popcorn taster. Eating popcorn was not a requirement of the job. Accordingly, the normal bodily function of eating or chewing could not give rise to an "injury" within the meaning of the Act.

We hold that the Department's rejection of this claim, on the ground that Ms. Rivkin's broken tooth was not the result of an "injury" under the Act, is correct as a matter of law.

FINDINGS OF FACT

Findings 1 and 2 of the Proposed Decision and Order entered in this matter on November 19, 1985, are hereby adopted by the Board and incorporated herein by this reference as the Board's final Findings 1 and 2. In addition, the Board finds:

3. The act of eating popcorn by Ms. Rivkin was not performed in response to any requirement of her job as an employee of the employer herein.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction of the parties and subject matter of this appeal.

2. The broken tooth sustained by Carol A. Rivkin on March 28, 1985, was not the result of an industrial injury within the meaning of RCW 51.08.100 and the pertinent case law construing said statute.

3. The order of the Department of Labor and Industries dated May 30, 1985, rejecting this claim for the reason that the claimant's condition was not the result of an industrial injury as defined by the Industrial Insurance Act, is correct and should be affirmed.

It is so ORDERED.

Dated this 22nd day of May, 1986.

BOARD OF INDUSTRIAL INSURANCE APPEALS
/s/_____
GARY B. WIGGS Chairperson

/s/_____
PHILLIP T. BORK Member