Buchheit, Joseph

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

Going and coming rule

Parking area exclusion (RCW 51.08.013)

Although security guard's injury occurred in the employer's parking lot, he was at the time furthering his employer's interests by retrieving messages concerning employees whom he supervised and he was therefore in the course of employment under the "special errand" exception to the going and coming rule. **….*In re Joseph Buchheit,* BIIA Dec., 88 2674 (1989)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: JOSEPH J. BUCHHEIT	**)**	**DOCKET NO. 88 2674**
	)	
CLAIM NO. K-326582	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Joseph J. Buchheit, by
Springer, Norman & Workman, per
John R. Dick

Employer, Columbia Security, by
Douglas A. Harvey, President and Denise Vargo-Harvey, General Manager

Department of Labor and Industries, by
The Attorney General, per
Nancy J. Hovis and Deborah J. Lazaldi, Assistants and by Shawn Ruth, Paralegal

This is an appeal filed by the claimant, Joseph J. Buchheit, on June 30, 1988 from an order of the Department of Labor and Industries dated May 3, 1988 which set aside and held for naught an order dated August 24, 1987 and rejected the claim for the reasons that: there was no proof of a specific injury at a definite time and place in the course of employment; claimant's condition was not the result of an industrial injury as defined by the industrial insurance laws; claimant was not under the industrial insurance laws at the time of injury; at the time of injury the claimant was not in the course of employment; and the injury occurred in a parking area and was not covered under the industrial insurance laws in accordance with RCW 51.08.013. The order also made demand for repayment of time-loss compensation paid for the period December 3, 1986 through July 6, 1987 in the amount of $3,367.62. **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 timely Petitions for Review filed by the employer and the Department of Labor and Industries in response to a Proposed Decision and Order issued on March 1, 1989 by which the order of the Department dated May 3, 1988 was reversed and the matter remanded to the Department to allow the claim for an industrial injury of December 2, 1986 and to take such other action as may be indicated or provided by law.

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

The claimant, Joseph J. Buchheit, was employed as a sergeant with Columbia Security in Longview, Washington. He was scheduled to work as a security guard at 3 p.m. on December 2, 1986. His jobsite on that day was a jewelry store. The usual procedure for a security guard would be to report directly to the jobsite and report in to the main office by radio. Mr. Buchheit, however, worked from time to time as a patrol supervisor. In that capacity he was responsible for taking action with respect to employees pursuant to notices or messages posted on the bulletin board at Columbia Security's main office.

Mr. Buchheit had previously told his employer that he might be late for work on December 2, 1986 because his wife had been hospitalized. About 2:45 on that date, however, he reported to the main office to advise his employer that he wouldn't be late, to chat about his wife's condition, and to pick up messages concerning persons whom he supervised. Upon leaving the employer's office to go to the jewelry store, Mr. Buchheit fell and injured his shoulder. He claims that the injury occurred on the sidewalk adjacent to the employer's office. Other evidence suggests that the injury occurred in a parking area which was reserved for employer vehicles.

According to the employer, Mr. Buchheit was not required to pick up his messages until he reported for patrol duty. Since Mr. Buchheit was assigned to work as a security guard on the date in question, the employer and the Department contend that it was not necessary for Mr. Buchheit to pick up his messages on December 2nd. Mr. Buchheit, on the other hand, testified that he was required to pick up his messages every day and to act on those messages as soon as possible. It is noted that Mr. Buchheit was scheduled to work two shifts on December 2nd, the first as a security guard at the jewelry store. The record does not disclose whether the second shift would have required Mr. Buchheit to work on security or on patrol.

The parties have conceded that Mr. Buchheit sustained an injury to his right shoulder area as a result of his fall, which required medical attention. The sole issues presented by this appeal are therefore:

1. Whether at the time of the December 2, 1986 injury the claimant was in the course of employment with his employer; and

2. Whether the parking area exclusion of RCW 51.08.013 precludes coverage of the injury.

Our Industrial Appeals Judge concluded that the parking area exclusion of RCW 51.08.013 does not apply to injuries occurring in a parking area reserved exclusively for employer and customer vehicles. He also concluded, however, that the claimant's injury occurred on the sidewalk adjacent to

the employer's offices and not in the parking area. Finally, as an alternative ground for allowing the claim, he concluded that the claimant was injured in the course of his employment with his employer because at the time of the injury he was engaged in a "special errand" for his employer and therefore in the course of employment. We disagree with our Industrial Appeals Judge's conclusion that the claimant's injury did not occur in a "parking area" as contemplated by RCW 51.08.013. However, because we find that the claimant was nevertheless in the course of employment at the time of his injury, we agree that the order of the Department rejecting the claim should be reversed and the claim allowed.

It is the general rule in this state that a worker is not "acting in the course of employment" while going to or from the jobsite. Flavorland Indus., Inc. v. Schumacher, 32 Wn.App. 428 (1982). A statutory exception to this general rule is contained in RCW 51.08.013. That statute includes within the definition of "acting in the course of employment" the "time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, ..." Yet there is an exception to this statutory inclusion, which is also contained in RCW 51.08.013. "Parking areas" are excluded from the areas constituting the jobsite.

It must be noted that the statutory exception to the going and coming rule as contained in RCW 51.08.013 is but one exception to the going and coming rule. Another exception, as enunciated in our decision of In re Brian Kozeni, Dec'd., BIIA Dec., 63,062 (1983), is the "special errand" rule. That rule, as set forth in 1 A. Larson, The Law of Workmen's Compensation, § 16.10 provides that:

> When an employee, having identifiable time and space limits on his employment, makes an off- premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

Thus, even though Mr. Buchheit's injury may have occurred within a parking area excluded from the statutory exception to the going and coming rule as contained in RCW 51.08.013, it may still be an injury compensable under our Industrial Insurance Act by virtue of the fact that it falls within the "special errand" exception to the going and coming rule which places the worker in the course of employment.

We agree with the contention of the Department and the employer that Mr. Buchheit's injury occurred in a "parking area." Although Mr. Buchheit testified that the injury occurred on the sidewalk adjacent to the parking lot, contemporaneous statements made to his employer and to hospital staff suggest that he actually fell in the parking lot. If Mr. Buchheit actually fell on the sidewalk, why, then, did he tell people at the time of his injury that he fell in the parking lot? Further, we note that he sustained a right knee abrasion when he fell. He explains that this occurred when he rolled over to get up. We find it more likely that Mr. Buchheit hurt his knee when he fell forward off the sidewalk and into the parking lot.

Our Industrial Appeals Judge also predicated his decision in part on the fact that the parking area was limited to employer-owned vehicles or vendor vehicles. He believed that the parking area exclusion of RCW 51.08.013 was therefore inapplicable because it was not an "employee" parking area. There is nothing in RCW 51.08.013 which expressly limits the parking area exception to "employee" parking areas. A further investigation of legislative intent might reveal that our Industrial Appeals Judge is correct in his conclusion that the parking area exception is so limited. However, because of our disposition of this appeal it is not necessary to resolve that issue in this case.

Admittedly, there is marked disagreement between Mr. Buchheit and his employer as to the need for him to report to the office to retrieve his messages. But whether he was required to do so or not, it is clear from the evidence that Mr. Buchheit regularly did report to the office to pick up his messages. While he may not have been compensated for his extra efforts in retrieving messages concerning employees he was obligated to supervise, it is sufficient that he was permitted to do so and in fact appeared to do so diligently and on a regular basis. It is apparent that by reporting to his employer's office Mr. Buchheit was furthering his employer's interests by keeping current on any matters affecting the persons he supervised. The fact that he may have performed such services without compensation is a tribute to his dedication as a supervisor.

Thus, this special errand itself meets the general definition of "acting in the course of employment" in RCW 51.08.013, since it constituted "the worker acting .... in the furtherance of his or her employer's business ...". It should also be noted that RCW 51.08.013 provides further that " ... it is not necessary that at the time an injury is sustained by a worker he or she be doing the work on which his or her compensation is based or that the event be within the time limits on which industrial insurance or medical aid premiums are paid."

After a careful review of the record of proceedings, including the briefs submitted by the parties, the Proposed Decision and Order, and the Petitions for Review filed in response thereto, we conclude that the order of the Department dated May 3, 1988 which rejected the claim is incorrect and should be reversed and this claim remanded to the Department with direction to allow the claim and to provide the claimant with such benefits as may be indicated by the law and the facts.

FINDINGS OF FACT

1. On December 15, 1986 the Department of Labor and Industries received a report of accident filed on behalf of the claimant, Joseph J. Buchheit, alleging an industrial injury to have occurred on December 2, 1986 while in the course of his employment with his employer, Columbia Security. On December 24, 1986 the Department entered an order rejecting the claim on the ground 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 February 20, 1987 the claimant filed a protest and request for reconsideration of the Department order dated December 24, 1986. On April 15, 1987 the Department issued an order which set aside the order of December 24, 1986 and held it for naught.

   On August 24, 1987 the Department issued an order allowing the claim for the injury of December 2, 1986 for medical treatment and other benefits as may be authorized or required by law. On September 4, 1987 the employer, Columbia Security, filed a protest and request for reconsideration of the Department order dated August 24, 1987. On September 18, 1987 the Department issued an order providing for the payment of time-loss compensation for the period December 3, 1986 through June 30, 1987. On September 22, 1987, the Department issued an order terminating time-loss compensation with payment for the period July 1, 1987 through July 6, 1987. On October 1, 1987, the employer filed a protest and request for reconsideration of the Department order dated September 22, 1987.

   On October 23, 1987 the claimant filed a protest and request for reconsideration of the calculation of monthly wages using actual time worked as opposed to the estimate and averaging process represented on the accident report. On December 31, 1987 the Department issued an order providing for partial payment of time-loss compensation for the period December 3, 1986 through June 30, 1987, less a deduction for time-loss compensation previously paid for the same period. On January 5, 1988, the Department issued an order providing for partial payment of time-loss compensation from July 1, 1987 through July 6, 1987, less a deduction for prior time-loss compensation paid for the same period.

   On January 27, 1988 the Department issued an order holding the order dated August 24, 1987 in abeyance. On May 3, 1988 the Department issued an order setting aside the order dated August 24, 1987 and holding

it for naught, providing that orders dated September 18, 1987, September 22, 1987, December 31, 1987 and January 5, 1988 be modified from final to interlocutory orders, and rejecting the claim on the grounds that there was no proof of a specific injury at a definite time and place in the course of employment; that claimant's condition was not the result of an industrial injury; that at the time of injury claimant was not in the course of employment; and that the injury occurred in a parking area and was not covered by the industrial insurance laws in accordance with RCW 51.08.013. The order further made demand for repayment of time-loss compensation paid for the period December 3, 1986 through July 6, 1987 in the amount of $3,367.62. On June 30, 1988 the claimant filed a notice of appeal with the Board of Industrial Insurance Appeals from the Department order dated May 3, 1988. On July 28, 1988 the Board entered an order granting the appeal, which had been assigned Docket No. 88 2674, and directing that proceedings be held on the issues raised by the notice of appeal.

2. At approximately 2:55 p.m., on December 2, 1986, claimant, Joseph J. Buchheit, suffered an injury when he fell and injured his right shoulder when leaving the office of his employer, Columbia Security.

3. As a proximate result of the injury of December 2, 1986, claimant required medical treatment for his right shoulder condition.

4. Claimant's fall, on December 2, 1986, occurred in a parking area adjacent to the office of the employer which was reserved for vehicles owned by the employer and the employer's vendors and from which employee vehicles were excluded.

5. At the time of his injury of December 2, 1986 the claimant was performing a "special errand" for his employer by checking for and retrieving messages concerning employees over whom he had supervisory responsibility, and in so doing he was furthering his employer's interests and acting in the course of his employment with his employer, Columbia Security.

CONCLUSIONS OF LAW

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

2. On December 2, 1986 the claimant sustained an industrial injury as defined by RCW 51.08.100 while he was acting in the course of his employment as defined in RCW 51.08.013.

3. The parking area exception of RCW 51.08.013 does not exclude from coverage under the Industrial Insurance Act the injury sustained by the claimant on December 2, 1986 in the employer's parking area, since at the time of such injury the claimant was acting in the furtherance of his employer's business and was not merely going to and from work.

4. The Department order dated May 3, 1988 which set aside a Department order dated August 24, 1987 and held it for naught, and which provided that orders dated September 18, 1987, September 22, 1987, December 31, 1987 and January 5, 1988 be modified from final to interlocutory orders, and which rejected the claim on the grounds that there was no proof of a specific injury at a definite time and place in the course of employment; that claimant's condition was not the result of an industrial injury; that at the time of injury the claimant was not in the course of his employment; and that the injury occurred in a parking area and was not covered by the industrial insurance laws in accordance with RCW 51.08.013, is incorrect and is reversed. This claim is remanded to the Department with direction to allow the claim for the industrial injury of December 2, 1986 and to take such other action as may be indicated by the law and the facts.

It is so ORDERED.

Dated this 5th day of September, 1989.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
SARA T. HARMON Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
PHILLIP T. BORK Member