# Trusley, Julie

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

**Parking area exclusion (RCW 51.08.013)**

A teacher slipped on ice as she carried class materials to the classroom. The materials were in her car trunk rather than in storage at a school less than a mile away to ensure that they would be accessible since they were essential to her job. The parking lot exception did not apply and that the worker was acting in the furtherance of the employer's business by transporting critical tools of the trade. ***….In re Julie Trusley*, BIIA Dec., 93 3124 (1994)** [dissent]

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS**
**STATE OF WASHINGTON**

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| **IN RE: JULIE A. TRUSLEY** | **)** | **DOCKET NO. 93 3124** |
| | **)** | |
| **CLAIM NO. T-778261** | **)** | **DECISION AND ORDER** |

APPEARANCES:

Claimant, Julie A. Trusley, by
Prediletto, Halpin, Scharnikow, Bothwell & Smart, P.S., per
Darrell K. Smart

Self-Insured Employer, Educational Service District #112, by
Roberts, Reinisch, Mackenzie, Healey & Wilson, P.C., per
Steven R. Reinisch and Craig A. Staples

This is an appeal filed by the claimant, Julie A. Trusley, on July 9, 1993 from an order of the Department of Labor and Industries dated June 17, 1993, which affirmed an order dated March 23, 1993, and rejected the claim for benefits 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. **REVERSED AND REMANDED.**

## PROCEDURAL AND EVIDENTIARY MATTERS

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, Julie A. Trusley, to a Proposed Decision and Order issued on March 30, 1994, in which the order of the Department dated June 17, 1993, rejecting the claim for the reason that at the time of injury the claimant was in a parking area and was not covered under the industrial insurance laws, was affirmed.

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.

## DECISION

Julie A. Trusley, the claimant, was the only witness who testified in this matter. Her uncontroverted testimony establishes that she was injured in the parking lot of the Goldendale Primary School when she slipped on ice as she was carrying job-related materials into the school. The only dispute in this appeal is whether she was acting in the course of her employment when she was injured. The record establishes that at the time she was injured Ms. Trusley was acting in the course of employment and her claim should be allowed.

At the close of work on the day previous to her injury, Ms. Trusley had elected to carry job-related equipment, described as "manipulatives," home in her car rather than returning them to storage at Goldendale Primary School. Ms. Trusley testified that:

> [m]anipulatives are things like scooter boards, balancing balls, the large balls, put kids over them and you work with them. All kinds of fine motor skills.
>
> So in that sense, it would be like scissors, crayons, chalk, lace-up toys, balls. Just different things like that.

12/22/93 Tr. at 8.

Although the distance between Goldendale Middle School and Goldendale Primary School is short, less than a mile, Ms. Trusley acted reasonably in waiting until the next morning to return the "manipulatives" or job-related equipment to Goldendale Primary School. In addition to the inconvenience of returning the equipment to storage at Goldendale Primary School on a cold winter evening, Ms. Trusley also had to be sure that the equipment would be available for use the next morning. She stated that she frequently stored the "manipulatives" in the trunk of her car in order to be sure that they would be accessible as they were essential to her job. The storage area assigned at Goldendale Primary School was shared with others and on occasion was unavailable. In order to be sure that she would have access to the materials she needed in order to provide services to children, Ms. Trusley stored the materials in the trunk of her car rather than in the storage area in the school. As it was absolutely essential that she have the equipment she described as "manipulatives" in order to work with students, Ms. Trusley was performing a part of her job when she carried them from her car to the school. Another explanation of her activities on the morning of injury which would also lead to coverage is that she was returning the "manipulatives" to storage at Goldendale Primary School. The nature of Ms. Trusley's job did not require that she do this at the end of the work day; she was only required to have the "manipulatives" available when she worked with students. In any event, at the time she was injured Ms. Trusley was transporting the "manipulatives" as a requirement of her job and was, therefore, engaged in her employment as a motor team assistant.

In a number of prior decisions we have been called on to determine the applicability of RCW 51.08.013 to situations which may on casual consideration seem to be very similar to Ms. Trusley's. We declined to provide coverage for a juvenile probation officer who was injured in an automobile accident on her way home from work. In re Carla A. Strane, Dckt. 90 5175 (March 17, 1992). Even though work-related files were in Ms. Strane's car at the time of the accident, coverage was denied

because she was going home from the jobsite and not engaged in the course of her employment. In a more recent case, we denied coverage as the injury occurred in a parking lot while the worker was "going to and [or] from work on the jobsite . . .." RCW 51.08.013. In re Court L. Armstrong, Dckt. 93 2913 (June 23, 1994). In a third appeal we provided coverage to a worker who had left the jobsite to get a needed tool from his truck, on the basis that he was engaged in the course of employment at the time of injury. In re Michael G. Kelly, Dckt. 92 4066 (February 16, 1994).

In determining coverage, we have drawn a careful distinction between workers who are injured while engaged in the course of employment and workers who are injured while "going to and from work on the jobsite . . .." RCW 51.08.013. Both Strane and Armstrong were going to or from work when they were injured, thus an inquiry as to where the injury occurred was appropriate. As both Kelly and Ms. Trusley were acting in furtherance of their employers' businesses, they were acting in the course of employment, and they were entitled to coverage when they were injured, it was unnecessary to inquire as to where their injuries occurred.

The parking lot exclusion contained in RCW 51.08.013 is not applicable because Ms. Trusley was not merely going to work on the jobsite. She was acting in the furtherance of her employer's business by transporting the implements of her job. Those implements or "manipulatives" were essential to her work, and without which she evidently could not perform her work. The need to handle or transport the critical tools of the trade after arriving at the jobsite distinguish Ms. Trusley's and Kelly cases from the Strane and Armstrong cases.

After consideration of the Proposed Decision and Order, the Petition for Review filed thereto on behalf of the claimant, the Response to Petition for Review filed on behalf of the self-insured employer and a careful review of the entire record before us, we are persuaded that the Department order dated June 17, 1993 is incorrect and must be reversed. The claim is remanded to the Department for allowance of Ms. Trusley's claim for the industrial injury of February 23, 1993.

## FINDINGS OF FACT

1. On March 15, 1993, the claimant, Julie A. Trusley, filed an application for benefits with the Department of Labor and Industries alleging that she sustained an injury on February 23, 1993, during the course of her employment with Educational Service District #112. On March 23, 1993, the Department of Labor and Industries issued an order rejecting the claim on the basis that the injury occurred in a parking area and is not covered by the industrial insurance laws in accordance with RCW 51.08.013. On April 9, 1993, the claimant filed a protest to the Department order dated March 23, 1993. On June 17, 1993, the Department issued an order

affirming its order dated March 23, 1993. On July 9, 1993, the claimant filed a Notice of Appeal with the Board of Industrial Insurance Appeals from the order dated June 17, 1993. On July 15, 1993, the Board issued an Order Granting Appeal, assigned it Docket 93 3124, and directed that further proceedings be held on the merits of the appeal.

2. On February 23, 1993, the claimant, Julie A. Trusley, retrieved a bag of equipment and supplies from the back of her car, and as she walked toward the Goldendale Primary School, she slipped in the parking lot on ice, injuring her knee, leg and ankle.

3. On February 23, 1993, as a result of the slip in the parking lot of the Goldendale Primary School, the claimant sustained injuries giving rise to a need for medical treatment.

4. When the claimant slipped and was injured on February 23, 1993, she was acting in furtherance of her employer's business as she was transporting equipment and supplies required in order to perform her job as a motor team assistant.

5. When the claimant slipped and fell on February 23, 1993, she was engaged in the course and scope of her employment with Educational Service District #112.

## CONCLUSIONS OF LAW

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

2. On February 23, 1993, when the claimant slipped and fell in the parking lot at Goldendale Primary School, she was acting in the course and scope of her employment with E.S.D. #112.

3. The Department order issued June 17, 1993, which affirmed a prior order issued March 23, 1993, which denied the claim on the grounds that the injury occurred in a parking area and is not covered under the industrial insurance laws in accordance with RCW 51.08.013, is incorrect, and is reversed and the claim remanded to the Department with directions to issue an order allowing the claim for the industrial injury of February 23, 1993 and for such further action as may be authorized or indicated by law.

It is so ORDERED.

Dated this 15th day of August, 1994.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
S. FREDERICK FELLER Member

/s/
FRANK E. FENNERTY, JR. Member

## DISSENT

I disagree with the Board majority. I would affirm the order of the Department dated June 17, 1993.

The claimant was not in the course of employment nor at her jobsite when she was injured. Her injury occurred in her employer's parking lot and is therefore not covered under the Industrial Insurance Act. Industrial Appeals Judge Strange's summary of the evidence is not disputed and he reached the correct decision based on that evidence.

The majority decision in this case stands for the proposition that as long as the claimant kept the "manipulatives" in her vehicle she is in the course of her employment and as long as she is transporting the "manipulatives" in any way that could be construed as possibly beneficial to her employer, no matter how far one must stretch to find such a connection.

In this case, the claimant chose to take the manipulatives home rather than return them to her place of employment, a voluntary act over which the employer had no control, and in this case, provided no benefit to the employer. The claimant's decision to transport the "manipulatives" to her home rather than return them to her primary jobsite was for her personal convenience--when she turned from what would have been her direct route back to the jobsite to "go home," she took herself out of the course of her employment. That status continued at all times the next morning for the trip to her primary jobsite into the parking lot where the injury occurred. Her status continued to be that of an employee coming to work and parking in an employer-provided parking lot. The presence of the "manipulatives" and the need for her to carry them into and onto the employer's premises from the parking lot was coincidental to her employment as a continuation of the voluntary decision to take the "manipulatives" home for her personal convenience.

Since the claimant was not in the course of her employment while in the employer's parking lot and her presence there was not beneficial to her employer, this case becomes a simple parking lot injury and is not covered.

Nothing in this record justifies further erosion of the parking lot exception to coverage. Although one can speculate that the injury was in part somehow related to the "manipulatives" under some special circumstances theory or rule, the clear and simple fact is this injury occurred in the employer's parking lot to an employee who was in the same status as any other worker in that parking lot who had not yet stepped into a course of employment status.

The claim was properly rejected and the Department's order should be affirmed.

Dated this 15th day of August, 1994.

/s/
ROBERT L. McCALLISTER Member