Burnett, Michael

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

Parking area exclusion (RCW 51.08.013)

A worker sustaining an injury in a parking area enclosed by a fence is not subject to the exclusion of RCW 51.08.013 where the injury occurred at a location within the enclosed area which was used exclusively for storage and not for parking. ***….In re Michael Burnett*, BIIA Dec., 49,588 (1978)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: MICHAEL P. BURNETT	**)**	**DOCKET NO. 49,588**
	)	
CLAIM NO. S-204329	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Michael P. Burnett, by
Jackson, Ulvestad, Goodwin and Grutz, per
Brian D. Scott

Employer, City of Seattle, per
Philip D. Summer, Industrial Insurance Division

This is an appeal filed by the employer, City of Seattle, on February 9, 1977, from an order of the Department of Labor and Industries dated January 11, 1977, which set aside a prior rejection order and held it for naught, and allowed this claim for treatment and for such other and further action as may be authorized or required by law. **SUSTAINED**.

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 employer to a Proposed Decision and Order issued by a hearing examiner for this Board on October 25, 1977, in which the order of the Department dated January 11, 1977 was sustained.

The specific question before us is whether the claimant was in a "parking area" when he sustained his injury on his employer's premises on September 24, 1976. If he was in a "parking area" at the time he was injured, his claim for benefits must be denied by reason of exclusion of "parking areas" in RCW 51.08.013. If he was not then in a "parking area", allowance of his claim was proper since all other elements of coverage are admittedly met.

The record establishes that quite some time prior to September 24, 1976, the employer had set aside a section of its property to be used as a parking area by its employees. The area was blacktopped and fenced and parking stalls were painted on the pavement. Thereafter it became apparent that the area was not a satisfactory parking area for a significant number of the employees, and many of them found places to park elsewhere. Shortly before September 24, 1976, there was only a portion of the original blacktopped area that was still being used by the employees as a parking area. The employer, realizing the need for another parking area, was in the process of building one. Prior to September 24, 1976, the employer had converted the use of

much of the area in the former parking lot, especially the areas adjacent to the surrounding fence, to a storage area where materials, such as compressors, old trucks, other vehicles, large reels of cable, and various other articles of used equipment, were stored. Because of this used equipment storage function, it came to be as the "bone yard."

On September 24, 1976, the claimant was proceeding from his work place at the employer's plant to his parked car, at the end of his work shift, and hopped from some poles in an adjacent pole yard to the fence surrounding this area where his car was parked on that day, and upon jumping down into an area where barricades were stored, injured his foot. He had not arrived at the location within the fence where some employees' automobiles, including his own, were parked.

In its Petition for Review, the employer argues that the hearing examiner was incorrect in using the "main purpose" concept, i.e., that this area's main purpose had become that of a storage area rather than a parking lot, because it was inaccurate and misleading. Employer argues that the claimant had been parking in that area about eight months, and he was injured while using the area for the purpose of parking. Employer alleges that therefore, the claimant was excluded from coverage at the time he was injured because of the "parking area" exclusion from the "course of employment" definition in RCW 51.08.013

The Board agrees with the employer that the "main purpose" concept is not applicable in this instance. As stated above, the only issue here is whether the claimant was injured in a "parking area." The employer is obviously contending that the whole area inside the fence was a "parking area" because it had originally been designed and used as such. We disagree with this contention. There is nothing magic about a fence that would forever stamp the whole area inside of it as a "parking area" if, in fact, much of such area was being used for something else. The particular location where the claimant fell was a storage area on the employer's premises; it clearly was not used for parked cars. It was not a "parking area" within the meaning of RCW 51.08.013, although some of the other area enclosed by the fence obviously still did constitute a "parking area." Clearly, the "parking area" exception to this broad definition of "acting in the course of employment" should be strictly construed and applied.

The Department's allowance of this claim will be sustained.

FINDINGS OF FACT

After careful review of the entire record, the Board finds as follows:

1. The claimant, Michael P. Burnett, filed a report of accident with the Department on October 30, 1976, alleging that he had sustained an industrial injury on September 24, 1976, while in the course of his

employment with the City of Seattle, a self-insured employer under the Industrial Insurance Act. On January 11, 1977, the Department entered an order allowing the claim. On February 9, 1977, the employer filed a notice of appeal with this Board, and the Board granted the appeal on March 4, 1977.

2. Some years prior to 1976, the employer had set aside a portion of its property at the City Light South Service Center as a "parking area" for its employees, and in doing so surrounded it with a fence, blacktopped it, and painted parking stalls on the pavement. However, this area had proved inconvenient for many employees at this plant site, and the employer was in the process of building a new parking area.

3. For some time prior to September 24, 1976, only a portion of the area surrounded by the fence was being used as a parking area for vehicles belonging to the employees. Much of the area on the blacktop, including areas adjacent to the inside of the fence, was being used as a storage area for old and used equipment, and had come to be known as the "bone yard."

4. On September 24, 1976, while returning to his automobile from his work station on the employer's premises, at the end of his shift, the claimant sustained an injury to his foot which required medical treatment, at a place inside the aforementioned fence, that was being used to store barricades, on the employer's property but not in the location with the fence that was being used by employees to park their cars.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Board concludes as follows:

1. This Board has jurisdiction of the parties and subject matter of this appeal.

2. The claimant was inured on the "job site" on September 24, 1976, as such term is defined in RCW 51.32.015 and RCW 51.36.040.

3. At the time the claimant was injured on September 24, 1976, he was not in a "parking area" as defined by RCW 51.08.013, and thus he was acting in the course of his employment at the time of said injury.

4. The order of the Department dated January 11, 1977, allowing this claim under the Workmen's Compensation Act for treatment and such other and further action as may be authorized or required by law, was correct and should be sustained.

It is so ORDERED.

Dated this 8th day of February, 1978.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
PHILLIP T. BORK Chairman

/s/
SAM KINVILLE Member