

Prentice, Austin, Dec'd

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

Intoxication

Intoxication evidenced by a blood alcohol content of .24 did not remove the worker from the course of employment where the worker had an above average tolerance for alcohol, was described as "sober and normal," and was still able to perform his work duties. *...In re Austin Prentice, Dec'd, BIA Dec., 50,892 (1979)*

Scroll down for order.

1 employment. The fatal injury in question, however, did not occur during this deviation. It occurred
2 after the decedent's personal deviation had been completed, and he had commenced his travel
3 home, and upon the very road he would have taken had he never stopped at the Lariat Room. In
4 other words, once the decedent commenced his journey home, he re-entered the course of his
5 employment. Morris v. Department of Labor and Industries, 179 Wash. 423 (1934). The critical
6 inquiry presented by this appeal is whether the decedent's intoxication, itself, removed him from the
7 course of employment?
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11 Unlike a number of jurisdictions, intoxication is not a statutory defense to a claim under our
12 Workers' Compensation Law. Accordingly, it must be dealt with the same as any other type of
13 deviation from the course of employment. Thus, the decedent's intoxication would not
14 disenfranchise him from coverage under the Act unless he became so intoxicated that he could no
15 longer perform his work duties. In that event, he would be deemed to have "abandoned" his
16 employment. See Tilly, supra.
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20 The decedent's homeward drive was part and parcel of his employment -- he was a traveling
21 salesman. The fact that the accident in question did not occur until the decedent had covered
22 some 40 miles of his homeward drive, conclusively demonstrates that he could drive. This fact
23 alone, to our mind, is sufficient to negate any contention that the decedent was so intoxicated as to
24 have "abandoned" his employment.
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28 We would, additionally, note further evidence in the record bearing upon the decedent's state
29 or degree of intoxication. The testimony of the cocktail waitress who served the decedent
30 characterizes him as sober and normal when she went off duty at 4:00 p.m. on the day in question.
31 The testimony of Bob Walthers, one of the decedent's drinking companions in the Lariat Room who
32 was with him up to about 5:30 p.m., describes the decedent as "feeling pretty good, the same as
33 himself," and about the way one would feel "after three or four drinks." The decedent's blood
34 alcohol reading of .24, although relatively substantial, must be viewed in light of the fact the
35 decedent was alcoholic. As such, he had a much higher than average tolerance for alcohol. Thus,
36 a reading of .24 for him would not be the same, in terms of its devastating effects, as it would for
37 the "normal" or "social" drinker. In short, the evidence of this matter does not depict the decedent
38 as being under a high degree of intoxication. Certainly, it does not paint a picture of a person who
39 was so intoxicated that it could reasonably be said that he had thereby "abandoned" his
40 employment.
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1 All told, we hold that the decedent's intoxication did not remove him from the course of
2 employment at the time of his fatal accident, and that the petitioner's claim herein for widow's
3 benefits should be allowed.
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6 **FINDINGS OF FACT**

7 Findings 1 through 3 of the Proposed Decision and Order entered herein are hereby adopted
8 by the Board and incorporated herein by this reference. Finding 5 of said Proposed Decision and
9 Order is hereby renumbered 4, and incorporated herein by this reference.
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11 Findings 4 and 6 of said Proposed Decision and Order are hereby stricken. The Board
12 makes the following Findings 5 and 6:
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- 14 5. A blood alcohol test revealed that at the time of his death Mr. Prentice
15 had a blood alcohol reading of .24 grams percent. Being alcoholic, Mr.
16 Prentice had a much higher tolerance for alcohol than the "normal" or
17 "social" drinker. Thus, a high blood alcohol level for him would not be
18 the same, in terms of its devastating effects, as it would be for the
19 "normal" or "social" drinker.
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21 6. The decedent, Austin Prentice, was not intoxicated to the extent that it
22 could reasonably be said that he had thereby abandoned his
23 employment.
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25 **CONCLUSIONS OF LAW**

26 Conclusions 1 through 3 of the Proposed Decision and Order entered herein are hereby
27 adopted by the Board and incorporated herein by this reference.
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29 It is so ORDERED.

30 Dated this 27th day of June, 1979.
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32 BOARD OF INDUSTRIAL INSURANCE APPEALS
33

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35 /s/ _____
36 MICHAEL L. HALL Chairman
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39 /s/ _____
40 SAM KINVILLE Member
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