

## Wissink, David

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### COVERAGE AND EXCLUSIONS

#### Inmates

County jail inmates who perform work as trustees are not 'volunteers' as defined by RCW 51.32.035 ...***In re David Wissink, BIIA Dec., 00 21485 (2002)*** [*Editor's Note: Reversed, Stevens County v Department of Labor & Indus., 118 Wn. App 870 (2003).*]

Scroll down for order.

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

1 **IN RE: DAVID J. WISSINK** ) **DOCKET NO. 00 21485**  
2 )  
3 **CLAIM NO. X-413661** ) **DECISION AND ORDER**  
4

5 **APPEARANCES:**

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7 Claimant, David J. Wissink, Pro Se,  
8 Not Participating

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10 Employer, Stevens County, by  
11 Stevens County Prosecuting Attorney's Office, per  
12 Lloyd Nickel, Deputy Prosecuting Attorney

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14 Department of Labor and Industries, by  
15 The Office of the Attorney General, per  
16 G. Ward McAuliffe, Assistant  
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19 The employer, Stevens County, filed an appeal with the Board of Industrial Insurance  
20 Appeals on October 30, 2000, from an order of the Department of Labor and Industries dated  
21 September 7, 2000. The order rejected the claim on the grounds that the claimant was not a  
22 worker as defined by the industrial insurance laws of the state of Washington. **AFFIRMED.**  
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25 **PROCEDURAL AND EVIDENTIARY MATTERS**

26 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
27 and decision on a timely Petition for Review filed by the Department to a Proposed Decision and  
28 Order issued on October 17, 2001, in which the order of the Department dated September 7, 2000,  
29 was reversed and remanded to the Department with direction to allow the claim.  
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32 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
33 no prejudicial error was committed and the rulings are affirmed.  
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36 In the Proposed Decision and Order, our industrial appeals judge marked and admitted  
37 Board Exhibit Nos. 11 and 12. The industrial appeals judge indicated that Exhibit No. 11 is a copy  
38 of WAC 296-20-6901. It is not. Exhibit No. 11 is a photocopy of WAC 296-17-746,  
39 Classification 6901-00, volunteers. The industrial appeals judge also marked Exhibit No. 12, and  
40 referred to it as a copy of WAC 296-20-7203. It is not. Exhibit No. 12 to the Board record is a copy  
41 of WAC 296-17-765, Classification 7203-00, community service workers. We make this correction  
42 in the identification of the exhibits, and we note that there is no WAC section 296-20-7203 or 296-  
43 20-6901. We also note that our industrial appeals judge refers, on page 11, line 25, of the  
44 Proposed Decision and Order, to WAC 296-17-230. There is no such code section.  
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1 **DECISION**

2 This matter was tried on stipulated facts. The issue presented in this case was whether  
3 Mr. Wissink, as a jail trustee in the Stevens County Jail, is a covered worker under the Washington  
4 State Industrial Insurance Act. We disagree with the result reached by the Proposed Decision and  
5 Order. We do not believe that Mr. Wissink, as an inmate of the Stevens County Jail, is a covered  
6 worker.  
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10 The record establishes that Stevens County elected coverage for volunteers in 1987,  
11 pursuant to the provisions of RCW 51.12.035. This section provides that a volunteer, under certain  
12 circumstances, can be included as a worker for the purpose of industrial insurance. Stevens  
13 County argues that the inmate/trustee meets the definition of volunteer under this section, and the  
14 county has elected coverage, paid the premiums, and, thus, the claim should be allowed. The  
15 Department argues that the inmate/trustee is not a true volunteer under the meaning of volunteer  
16 as set forth in RCW 51.12.035, and since there is no other provision of coverage, the claim must be  
17 rejected.  
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22 The Legislature has addressed industrial insurance coverage for individuals who are under a  
23 criminal sentence. RCW 51.12.045 provides that offenders who are performing community service  
24 pursuant to a court order may be deemed employees for purposes of industrial insurance.  
25 RCW Chapter 72.64 deals with industrial insurance coverage for prison workers.  
26 RCW Chapter 72.60 has provision for industrial insurance for inmates in Correctional Industries.  
27 Neither RCW Chapter 72.64 or RCW Chapter 72.60 apply to the facts of this case since  
28 Mr. Wissink was not a prisoner in the state correctional system.  
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32 Our review of this legislation convinces us that the Legislature is aware that individuals who  
33 are under confinement on a criminal sentence may be performing work and it may be appropriate to  
34 extend coverage under our industrial insurance system in certain situations. Therefore, although  
35 the parties are arguing whether this claim fits within the definition of volunteer, as set forth in the  
36 Industrial Insurance Act under RCW 51.12.035, we think it appropriate to look at the overall  
37 legislative scheme addressing individuals under criminal sentence.  
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41 We believe that when all the provisions addressing individuals under criminal sentence are  
42 examined together, it is logical to arrive at the conclusion that the Legislature has excluded inmates  
43 of jails and prison systems, unless specifically provided for by an exception. We also believe the  
44 Legislature has excluded prisoners and jail inmates from the definition of volunteer by including the  
45 language, "brought about by one's own free choice." We do not believe that being allowed to  
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1 perform work when under a criminal sentence is the same as an individual freely volunteering to  
2 perform the work. "Brought about by one's own free choice" is specific language limiting the  
3 definition of volunteer activity. We find that this specific language regarding free choice to exclude  
4 individuals under a criminal conviction and sentence. Since Mr. Wissink is not a volunteer under  
5 the definition of RCW 51.12.035, and there is no specific provision in the Industrial Insurance Act to  
6 provide for coverage as an inmate/trustee in the Stevens County Jail, the claim must be rejected.  
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10 The issue of whether the parties are equitably estopped based on their respective  
11 performance under Stevens County's decision to elect coverage and pay premiums, was correctly  
12 determined in the Proposed Decision and Order. Equitable estoppel cannot apply in this situation  
13 since it is clear that the Department and Stevens County were unaware of the other's actions and  
14 position regarding coverage for the trustee/inmate. The Department order rejecting the claim is  
15 affirmed.  
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### 18 **FINDINGS OF FACT**

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20 1. On August 14, 2000, an application for benefits was filed with the  
21 Department of Labor and Industries, alleging that on August 8, 2000,  
22 David J. Wissink was injured while working as an inmate of the Stevens  
23 County Jail. On September 7, 2000, the Department of Labor and  
24 Industries issued an order rejecting the claim for benefits on the ground  
25 the claimant was not a worker as defined by the industrial insurance  
26 laws of the state of Washington. On October 30, 2000, Stevens County  
27 filed a Notice of Appeal with the Board of Industrial Insurance Appeals  
28 from the Department order dated September 7, 2000. On November 28,  
29 2000, the Board issued an order granting the appeal and directed that  
30 further proceedings be held.  
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- 32 2. On August 8, 2000, David J. Wissink was serving a sentence in the  
33 Stevens County Jail after conviction of a crime. Stevens County had an  
34 inmate worker program for inmates. Mr. Wissink was an inmate worker.  
35 On August 8, 2000, he was assisting in moving a bunk into a cell. He  
36 caught his hand between the bunk's frame and the frame of the cell's  
37 door. This injured his right hand. As an inmate worker, Mr. Wissink was  
38 permitted to perform work activities within the jail.  
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### 40 **CONCLUSIONS OF LAW**

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42 1. The Board of Industrial Insurance Appeals has jurisdiction over the  
43 parties and the subject matter to this appeal.  
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- 45 2. On August 8, 2000, at the time of his injury, David J. Wissink was not a  
46 worker as contemplated by RCW 51.08.180 and RCW 51.08.195.  
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