

Carey, Deborah

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

Parking area exclusion (RCW 51.08.013)

A worker is acting in the furtherance of the employer's business when required to park in an employer-designated parking lot, subject to disciplinary action for non-compliance, and the employer's directive was issued in furtherance of its business interests. A worker injured in a parking lot, under such circumstances, is acting in the course of employment and the parking area exclusion of RCW 51.08.013 does not apply. ...*In re Deborah Carey*, BIIA Dec., 03 13166 (2004)

Scroll down for order.

1 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
2 no prejudicial error was committed. The rulings are affirmed.
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4 The parties submitted these matters for decision based on stipulated facts. In the Stipulation
5 of Parties filed with the Board on February 23, 2004, the parties stipulated as follows:
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- 7 (1) On December 21, 2002, the claimant, Deborah J. Carey, was employed
8 at Prosser Memorial Hospital as a registered nurse.
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- 10 (2) During the period including December 21, 2002, Prosser Memorial
11 Hospital had a policy requiring all employees to utilize certain parking
12 lots that were under the hospital's control, for coming to and going from
13 work. The hospital parking policy derived from a mandate of the City of
14 Prosser, which required the hospital to mitigate against traffic
15 congestion by having employees park in specified parking areas.
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- 17 (3) Hospital employees were subject to discipline if they did not comply with
18 the hospital's parking policy and utilize the designated areas for parking.
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- 20 (4) On December 21, 2002, Ms. Carey drove to work and parked her
21 vehicle in one of the designated parking areas. At approximately
22 10:58 p.m., while walking through the parking lot for the sole purpose of
23 commencing her work shift, Ms. Carey slipped and fell in the parking lot,
24 sustaining an injury.
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26 There are two issues presented by these appeals. The first and primary issue is whether
27 the claimant was in the course of her employment when she sustained an injury while going to work
28 in an employer-designated parking area. The second issue, the disposition of which is dependent
29 upon our disposition of the first issue, is whether the Department was correct in directing Ms. Carey
30 to reimburse the self-insured employer for an overpayment of time loss compensation received for
31 the period from December 30, 2002 through January 7, 2003, in the amount of \$141.91.
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33 Our industrial appeals judge determined that the parking lot exception precludes coverage of
34 this claim under the Industrial Insurance Act. In addition, he found that Ms. Carey was not acting at
35 her employer's direction or in furtherance of the employer's business, when she parked in a
36 designated parking lot, as required by the employer. Ms. Carey contends that she is entitled to
37 coverage because she was acting in compliance with an employer directive to park in designated
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1 areas, and was subject to disciplinary action by the employer for non-compliance. We agree with
2 Ms. Carey's contention. We also find that the claimant's compliance with the employer's directive
3 was in furtherance of the employer's business, given the mandate from the City of Prosser to the
4 employer.
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7 The Industrial Insurance Act provides for workers' compensation benefits to:

8 each worker receiving an injury, . . . during the course of his or her
9 employment . . . while on the jobsite. The jobsite shall consist of the
10 premises as are occupied, used or contracted for by the employer for
11 the business or work process in which the employer is then engaged:
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13 RCW 51.32.015 and RCW 51.36.040. The Act also defines when a worker is "acting in the course
14 of employment." RCW 51.08.013(1) provides:

15 "Acting in the course of employment" means the worker acting at his or
16 her employer's direction or in the furtherance of his or her employer's
17 business which shall include time spent going to and from work on the
18 jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such
19 time is immediate to the actual time that the worker is engaged in the
20 work process in areas controlled by his or her employer, except parking
21 area. It is not necessary that at the time an injury is sustained by a
22 worker he or she is doing the work on which his or her compensation is
23 based
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26 Our courts and the Board have considered the "course of employment" statute and the
27 parking lot exception in numerous cases. When considering the parking lot exception, the Board
28 has consistently recognized that statutory exceptions to coverage under the Industrial Insurance Act
29 are to be narrowly construed, and that the parking lot exception is not absolute.
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32 The Court of Appeals, Division I, in *Bolden v. State*, 95 Wn. App. 218, 221 (1999), provided
33 guidance for our consideration and disposition of this issue.
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35 The plain reading of the statute suggests that the appropriate
36 query is whether the injury occurred on a location where the injured
37 employee was acting in the course of his employment (inherently
38 including a jobsite) or a location where he was coming to or going from
39 work, except parking areas. Therefore, "unless a parking lot is itself an
40 employee's 'jobsite' (that is, where the employee is actually working
41 rather than going to and from work), it is exempt from the workers'
42 compensation statute."
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44 Thus, *Bolden* would be covered if . . . directed to be in the parking lot, or
45 had been performing work duties there in furtherance DOT's business,
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1 In *Bolden*, the Court of Appeals applied the parking lot exception to exclude coverage for an
2 injury the claimant sustained while going from work in a designated parking area. Mr. Bolden's
3 vehicle was parked in a "mixed-use" area, an area used for employees' parking of personal
4 vehicles, as well as a jobsite because DOT vehicles were prepared for use there. Even so, the
5 court held that the parking lot exception applied because the claimant was not using the parking lot
6 as his jobsite, and was not in furtherance of his employer's business at the time of the injury. In
7 other words, the *Bolden* court was compelled to apply the parking lot exception because the
8 claimant was injured while going from work in a designated parking area, and he was not otherwise
9 acting in the course of his employment when the injury occurred.
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11 In these appeals, the parties stipulated that the employer directed Ms. Carey to park her
12 vehicle in a designated parking area, and that she was injured in the designated parking area while
13 going to work. Under such circumstances and without more distinguishing facts, our query would
14 end with a result similar to the result in *Bolden*. The parking lot exception would clearly apply to
15 exclude workers' compensation coverage. There are two additional salient facts, which require a
16 different result in this appeal, however. First, Ms. Carey was subject to disciplinary action for failure
17 to comply with the employer's parking policy and utilize the designated parking areas. Second, the
18 employer's policy derived from a mandate of the City of Prosser, which required the employer to
19 mitigate against traffic congestion by having employees park in specified parking areas.
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21 In our view, the threat of disciplinary action against Ms. Carey distinguishes this case from
22 *Bolden* and other parking lot cases we have considered. Most parking lot cases involve assigned,
23 designated, employer-provided, or specified parking areas, but do not include the assertion of
24 supervisory control by the employer over the employee's actions, as in these appeals. By asserting
25 such supervisory control and the right to discipline an employee for failure to comply with the
26 employer's parking policy, the employer assumed duties and responsibilities, from which the
27 employer would otherwise be exempt (parking lot exception). Under these circumstances, we are
28 persuaded that Ms. Carey was clearly acting at her employer's direction when she complied with its
29 policy and parked in a designated parking area, and that the parking lot exception does not apply to
30 preclude coverage in this case.
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1 The mandate from the City of Prosser to the employer is also an important and distinguishing
2 fact in these appeals. The parties stipulated that the employer's parking policy derived from the
3 mandate from the City of Prosser, which required the employer to mitigate against traffic
4 congestion. The fact that the City of Prosser mandated such action necessarily implies some
5 penalty, sanction, or ill effects for failure to comply with the mandate. Such an inference is
6 reasonable given the fact that the employer adopted a parking policy with a penalty, disciplinary
7 action, for non-compliance. As a result, we are convinced that it was beneficial for the employer to
8 comply with the mandate from the City of Prosser, and that Ms. Carey was acting in furtherance of
9 the employer's business or interests when she complied with the employer's parking policy.
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14 In addition, the employer's parking policy made parking in designated areas a term or
15 condition of employment. As such, Ms. Carey's compliance with that policy necessarily constituted
16 acting at the employer's direction and in furtherance of the employer's business. Because she was
17 thereby acting in the course of employment, it is irrelevant that the injury happened to occur in a
18 parking area. It also does not matter that she was not yet "on the clock" when the injury occurred.
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22 The rationale for this result is analogous to the rationale for employer-furnished
23 transportation cases. We have recognized that it is a well-settled rule that a worker is within the
24 course of employment when traveling to and from work in employer-furnished transportation "as an
25 incident of the employment pursuant to custom or contractual obligation, either express or implied."
26 *In re John M. Adamo*, Dckt. No. 99 20817 (February 13, 2001). The rationale for coverage is that
27 the vehicle supplied by the employer is for the "mutual benefit" of the employer and the worker "to
28 facilitate the progress of the work." *Aloha Lumber Corp. v. Department of Labor & Indus.*, 77 Wn.2d
29 736 (1970).
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34 In these appeals, Ms. Carey's act of parking in an employer-controlled and maintained area,
35 as mandated by the City of Prosser and required by the employer's parking policy, was clearly
36 mutually beneficial to her employer and herself, and facilitated the progress of the work. The
37 motivation for Ms. Carey and the employer was the same; both wanted to avoid getting into trouble.
38 Ms. Carey did not want to be disciplined for non-compliance with the employer's policy, and the
39 employer did not want to get into trouble with the City of Prosser for non-compliance with its
40 mandate. It is axiomatic that either kind of trouble hinders the progress of the employer's work,
41 while avoiding such trouble facilitates it.
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1 After consideration of the Proposed Decision and Order, the claimant's Petition for Review,
2 and a careful review of the entire record before us, we are persuaded that the Department orders
3 dated March 5, 2003 and March 21, 2003, are incorrect. Therefore, we are reversing those orders
4 and remanding these matters to the Department with directions to issue an order wherein the
5 Department determines that the claimant sustained an injury during the course of her employment
6 on December 21, 2002, and vacates the overpayment for time loss compensation paid during the
7 period from December 30, 2002 through January 7, 2003.
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11 **FINDINGS OF FACT**
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- 13 1. On January 21, 2003, the claimant, Deborah J. Carey, filed an
14 application for benefits with the Department of Labor and Industries,
15 alleging the occurrence of an industrial injury on December 21, 2002,
16 during the course of her employment with Prosser Memorial Hospital.
17 On January 29, 2003, the Department issued an order in which the
18 Department denied the claim because the alleged injury occurred in a
19 parking area and was not covered under the industrial insurance laws,
20 pursuant to RCW 51.08.013.
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22 On February 10, 2003, the claimant filed a protest with the Department
23 from the January 29, 2003 order. On March 5, 2003, the Department
24 issued an order in which it affirmed the prior order of January 29, 2003.
25 On March 21, 2003, the Department issued an order in which it directed
26 the claimant to repay the self-insured employer for overpaid time loss
27 compensation for the periods from December 30, 2002 through
28 January 7, 2003, in the amount of \$141.91.
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30 On March 28, 2003, the claimant filed a protest with the Department
31 from the March 21, 2003 order. Also on March 28, 2003, the claimant
32 filed an appeal with the Board of Industrial Insurance Appeals from the
33 March 5, 2003 order, in which the Department affirmed the denial of the
34 claim.
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36 On April 11, 2003, the Board issued an order granting the claimant's
37 appeal from the March 5, 2003 Department order, assigning it Docket
38 No. 03 13166, and directing that proceedings be held.
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40 On May 23, 2003, the Department forwarded on to the Board as a direct
41 appeal, the claimant's protest from the March 21, 2003 Department
42 order, in which the Department assessed an overpayment. The
43 Department received the protest on March 28, 2003.
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1 On May 28, 2003, the Board issued an order granting the claimant's
2 appeal from the March 21, 2003 Department order, assigning it Docket
3 No. 03 15519, and directing that proceedings be held.
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- 5 2. On December 21, 2002, the claimant, Deborah J. Carey, was employed
6 at Prosser Memorial Hospital as a registered nurse.
7
- 8 3. During the period including December 21, 2002, Prosser Memorial
9 Hospital had a policy requiring all employees to utilize certain parking
10 lots, which were under the hospital's control, for coming to and going
11 from work. The hospital parking policy derived from a mandate of the
12 City of Prosser, which required the hospital to mitigate against traffic
13 congestion by having employees park in specified parking areas.
14 Hospital employees were subject to discipline if they did not comply with
15 the hospital's parking policy and utilize the designated areas for parking.
16
- 17 4. On December 21, 2002, Ms. Carey drove to work and parked her
18 vehicle in one of the designated parking areas. At approximately
19 10:58 p.m., while walking through the parking lot for the sole purpose of
20 commencing her work shift, Ms. Carey slipped and fell in the parking lot,
21 sustaining an injury.
22
- 23 5. At the time of her injury on December 21, 2002, Ms. Carey was acting at
24 the direction of Prosser Memorial Hospital.
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- 26 6. At the time of her injury on December 21, 2002, Ms. Carey was acting in
27 the furtherance of Prosser Memorial Hospital's business interests.
28

CONCLUSIONS OF LAW

- 29 1. The Board of Industrial Insurance Appeals has jurisdiction over the
30 parties to and the subject matter of these appeals.
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- 32 2. On December 21, 2002, Ms. Carey sustained an injury during in the
33 course of her employment with Prosser Memorial Hospital, within the
34 contemplation of RCW 51.08.013 and RCW 51.32.015.
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- 36 3. Ms. Carey's injury of December 21, 2002, is not excluded from industrial
37 insurance coverage by the parking-area exception of RCW 51.08.013.
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- 39 4. The order of the Department of Labor and Industries dated March 5,
40 2003, is incorrect and is reversed.
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- 42 5. The order of the Department of Labor and Industries dated March 21,
43 2003, is incorrect and is reversed.
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1 6. This claim is remanded to the Department with directions to issue an
2 order wherein the Department determines that the claimant sustained an
3 injury during the course of her employment with Prosser Memorial
4 Hospital on December 21, 2002, and vacates the finding of an
5 overpayment for time loss compensation paid for the period from
6 December 30, 2002 through January 7, 2003, inclusive. Thereupon, the
7 Department shall take such other and further action as indicated or
8 required by the law and the facts.
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10 It is so **ORDERED**.

11 Dated this 12th day of July, 2004.
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13 BOARD OF INDUSTRIAL INSURANCE APPEALS
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17 /s/ _____
18 THOMAS E. EGAN Chairperson
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22 /s/ _____
23 FRANK E. FENNERTY, JR. Member
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27 /s/ _____
28 CALHOUN DICKINSON Member
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