

Webster, Marilyn

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

Job site

Common entries that provide the only available route to work are premises used, occupied, or contracted for by the employer regardless of the use of the common entry by other businesses. ...*In re Marilyn Webster*, BIIA Dec., 03 18058 (2005)

Scroll down for order.

1 Ms. Webster was "in the course of her employment" when she suffered the
2 November 8, 2002 injury.
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4 The record clearly establishes that the right knee injury occurred as Ms. Webster stepped
5 from the public sidewalk up and onto the front step of the Holley-Mason Building at about 7:50 a.m.,
6 November 8, 2002. In reaching this determination, we find Ms. Webster's account of her injury
7 convincing and the observations of Jerome Sanders, the security guard in the lobby of the building
8 at the time of the incident, questionable. Ms. Webster testified that prior to the injury she had a
9 normal gait that was self-described as a "waddle." Her gait resulted from the fact that she is just
10 less than five feet tall and weighs three hundred pounds. Mr. Sanders' description of Ms. Webster's
11 gait approaching the building that morning is entirely consistent with her description of her normal
12 gait as a "waddle" and not indicative of a true limp. We also find that Mr. Sanders was not in a
13 position to observe the occurrence of the injury on the front step and was mistaken regarding the
14 time that Ms. Webster came to work.
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20 The injury occurred at a "time . . . immediate to the actual time" that Ms. Webster was
21 required to be at work. RCW 51.08.013. The only question remaining in determining if
22 Ms. Webster was "[a]cting in the course of employment" was whether she was "on the jobsite, as
23 defined in RCW 51.32.015 and 51.36.040." Both RCW 51.32.015 and RCW 51.36.040 define the
24 jobsite as "the premises as are occupied, used or contracted for by the employer for the business
25 or work process in which the employer is then engaged." When Ms. Webster suffered the injury to
26 her knee, she was proceeding to work along a route required by her special needs and authorized
27 by her employer by the provision of a special key card. There was no route available for Ms.
28 Webster to get to her work station on the second floor other than the path that she took on the
29 morning of November 8, 2002. The entrance and the lobby were clearly areas "used or contracted
30 for by the" Dakotah Direct II company "for the business or work process in which" it was then
31 engaged. RCW 51.32.015. Ms. Webster was on the jobsite when she suffered the injury to her
32 right knee.
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40 In its Petition for Review, the employer references a Board Decision and Order, *In re Carol J.*
41 *Agostinacci*, Dckt. No. 01 10943 (May 22, 2002), in which this Board dealt with the same issue as
42 presented by Ms. Webster's appeal. The facts in this appeal are similar to those presented by the
43 *Agostinacci* appeal. Ms. Agostinacci was entering the Bellevue Square Mall on the way to her job
44 at The Bon Marche when she was injured. In making its decision in the *Agostinacci* case, this
45 Board determined that the common areas in the mall were not owned or controlled by the employer,
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1 that the employer was not responsible for the hazard that resulted in the injury, and that "the
2 employer was not using the place of the injury in its business or work process." *Agostinacci*, at 6.
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4 While we would agree that neither of these appeals would fall within the holding of *Hamilton v.*
5 *Department of Labor & Indus.*, 77 Wn.2d 355 (1969), or its progeny, we believe that, just as
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7 Ms. Agostinacci was on the jobsite, Ms. Webster was, as well. Not only do we find that our decision
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9 in the *Agostinacci* case is not controlling, we specifically overrule our holding in that case.

10 After consideration of the Proposed Decision and Order, the employer's Petition for Review
11 filed thereto, the Claimant's Reply to Petition for Review, and a careful review of the entire record
12 before us, we are persuaded that the Proposed Decision and Order is supported by the
13 preponderance of the evidence and is correct as a matter of law. The Department order is reversed
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15 and the claim remanded to be allowed for the industrial injury that occurred on November 8, 2002,
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17 to Ms. Webster's right knee during the course of her employment.

18 **FINDINGS OF FACT**

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20 1. On December 4, 2002, Marilyn K. Webster filed an application for
21 benefits with the Department of Labor and Industries. She alleged that
22 on November 8, 2002, while in the employ of Dakota Direct II, she
23 injured her right knee. On June 18, 2003, the Department issued an
24 order in which it rejected the claim on the following grounds: no proof of
25 a specific injury at a definite time and place in the course of
26 employment; that the condition was not the result of the alleged injury;
27 that the condition did not constitute an industrial injury; and, that the
28 condition did not constitute an occupational disease. On July 28, 2003,
29 Ms. Webster filed her Notice of Appeal with the Board of Industrial
30 Insurance Appeals from the June 18, 2003 Department order. On
31 September 10, 2003, the Board issued an order in which it granted the
32 appeal.
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- 34 2. Marilyn K. Webster was born on October 2, 1948. She stands 4 feet,
35 11½ inches tall and weighs 300 pounds. She suffers from asthma.
36 Ms. Webster's asthma and weight bar her from climbing stairs. Her
37 weight restricts her from striding in a manner normal to persons of less
38 weight. Ms. Webster describes the way she walks as "waddling."
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- 40 3. On November 8, 2002, at about 7:50 a.m., the claimant, Marilyn K.
41 Webster, while entering the Holley-Mason Building, located at 157 S.
42 Howard Street, in Spokane, Washington, injured her right knee when
43 she stepped from the public sidewalk onto the front step of that building,
44 resulting in a condition that required proper and necessary medical
45 treatment.
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- 47 4. The common areas of the Holley-Mason Building, including the lobby
and the front step on Howard Street, are part of the premises occupied,

1 used or contracted for by the employer, Dakota Direct II, for the
2 business and work in which it engages.

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4 5. Dakota Direct II employed Marilyn K. Webster as an eligibility benefits
5 clerk and as such a clerk, she was paid on an hourly basis. For
6 employees on Ms. Webster's shift, Dakota Direct II began paying such
7 clerks at 8:00 a.m.

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9 6. Dakota Direct II began its workday for eligibility benefits clerks at
10 7:50 a.m. Before it began to pay them at 8:00 a.m., Dakota Direct II
11 required each of its eligibility benefits clerks to be at the workstation; to
12 turn on the computer; to access a program and check the approximately
13 thirty screens of that program; and, to put on telephone earphones. This
14 process took ten minutes. At the end of this process, the clerk's
15 computer signals the supervisor's computer that the clerk is ready to
16 receive incoming telephone calls.

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18 7. On November 8, 2002, Marilyn K. Webster parked her car in the parking
19 lot west of Howard Street across from the Holley-Mason Building. She
20 crossed Howard Street directly from the parking lot to the Howard Street
21 entrance to the building. She was not limping. She was waddling in her
22 normal manner.

23 She crossed the sidewalk and placed her right leg up on the single step
24 to the entrance of the Holley-Mason Building. She shifted her weight to
25 that leg and began to move forward as she lifted her weight onto that
26 leg. She heard a pop in her knee and felt immediate, disabling pain.
27 She tore the medial meniscus of her right knee. Prior to her injury, she
28 had pre-existing degenerative changes of articular cartilage of the
29 medial femoral condyle and advanced chondromalacia patella.

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31 A security guard, along with a co-worker, carried Ms. Webster to a van,
32 and she was taken to the emergency room of Sacred Heart Hospital,
33 where she received medical treatment.

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35 8. On November 8, 2002, the route Marilyn K. Webster took to her
36 workstation was the only route available to her in light of her special
37 needs and was the route authorized by her employer through provisions
38 of an electronic card.

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40 **CONCLUSIONS OF LAW**

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

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44 2. On November 8, 2002, the step into the main entrance of the
45 Holley-Mason Building, located at 157 S. Howard Street, in Spokane,
46 Washington, constituted a part of Marilyn K. Webster's jobsite within the
47 meaning of RCW 51.32.015 and RCW 51.36.040.

