

Mathieson, Robert, Dec'd

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

Dual purpose doctrine

The business purpose of a trip was not established where the worker's real motive was to see his wife rather than to purchase parts for his employer, and the trip would have been made even if the business purpose had failed. ...*In re Robert Mathieson, Dec'd*, BIIA Dec., 07,099 (1958)

Scroll down for order.

1 At a hearing held in connection with this appeal, counsel for the department and the employer
2 stated it was their contention that the petitioner was not entitled to relief under the workmen's
3 compensation act for two reasons: (1) That the deceased was not in the course of his employment
4 at the time he met his death; and, (2) that the deceased was killed during the commission of a crime
5 (driving an automobile while under the influence of liquor).
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9 At a board hearing, before any testimony was presented, all parties stipulated that the board
10 could consider the following facts as part of the evidence in this appeal:
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12 "That Robert Tweedy Mathieson, whose home was South 104 Ralph
13 Street, Spokane, Washington, was employed as a heavy duty mechanic
14 by the Valley Construction Company, whose home office is 7722 Rainier
15 Avenue, Seattle, Washington. Mr. Mathieson had been so employed by
16 Valley Construction Company for approximately two years when on
17 October 21, 1954 he was sent by his employer to work on a construction
18 job near Moses Lake, Washington. While on the Moses Lake job, Mr.
19 Mathieson worked and was paid on the basis of ten hours per day,
20 Monday through Friday of each week; his work day running from 7:00
21 a.m. to 4:30 p.m. of each day.
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23 "Washington State Industrial Insurance premiums were paid by the
24 Employer for all of Mr. Mathieson's payroll hours.
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26 "From the time he started on the Moses Lake job until his death on
27 October 30, 1955, Mr. Mathieson returned to Spokane on each week
28 end, with the exception of approximately two weekends when he
29 remained at Moses Lake.
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31 "On every week end that he returned to Spokane, Mr. Mathieson was
32 permitted by his employer to leave the job at Moses Lake around 1:30
33 p.m. on Friday afternoons to drive to Spokane, but his pay would
34 continue until the end of the normal working day at 4:30 p.m. on each
35 such Friday.
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37 "On some of these weekends, Mr. Mathieson purchased machinery
38 parts in Spokane for his employer for the job at Moses Lake and would
39 return such parts before the commencement of the regular working day
40 on the following Monday. These parts were of a quantity that could be
41 carried in his private passenger car.
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43 "On Friday, October 28, 1955, Mr. Mathieson was working on the Valley
44 Construction Company job near Moses Lake in his capacity as a heavy
45 duty mechanic. He was permitted to leave the job that day in Moses
46 Lake at approximately 1:30 p.m. to drive to Spokane. His pay continued
47 through the balance of the regular working day.

1 "The following day, Saturday, October 29, 1955, Mr. Mathieson
2 purchased certain parts and supplies in Spokane, all of which were
3 charged to the account of his employer, Valley Construction Company.
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5 "On the same day, Saturday, October 29, 1955, Mr. Mathieson's auto
6 developed mechanical trouble so he spent part of Saturday afternoon
7 and Sunday trying to repair the auto but did not have the necessary
8 parts to complete the job. Mr. Mathieson borrowed his stepson's auto,
9 placed the parts and supplies for his employer in this auto so he could
10 return them to the Moses Lake job at the time he started his work shift at
11 7:00 a.m. on Monday, October 31, 1955.
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13 "He left for Moses Lake from his home in Spokane around 4:30 to 5:00
14 p.m. Sunday, October 30, 1955. In so doing, and while driving south of
15 Cheney, Washington, on U.S. Highway No. 10, Mr. Mathieson attempted
16 to pass another auto and was killed in a head-on collision with an auto
17 coming from the opposite direction.
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19 "Mr. Mathieson's body was removed from the wrecked auto and the
20 wreck was towed to Cheney, Washington.
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22 "The following morning, Monday, October 31, 1955, the widow's son-in-
23 law, George Koeller, phoned from his home in Opportunity, Washington,
24 to the Valley Construction Company in Moses Lake, to advise Mr.
25 Mathieson had had an accident and he was requested by a
26 representative of the Valley Construction Company to go to Cheney,
27 remove the parts and supplies purchased for the employer from the
28 wrecked auto and ship them immediately to Moses Lake. Thereupon
29 Mr. Koeller drove to Cheney, secured the parts and supplies and
30 shipped them express by a Greyhound bus at 11:55 a.m. that morning
31 as requested by Valley Construction Company. The shipment consisted
32 of two pieces of the above-described parts and supplies, weighing a total
33 of 27 pounds."
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35 In addition to the foregoing stipulated facts, the parties presented evidence which establishes
36 the following undisputed facts: Mr. and Mrs. Mathieson had maintained their home in Spokane
37 continuously since 1949. Mrs. Mathieson did not move to Moses Lake with her husband because "I
38 had the home to take care of," but she had an understanding with her husband that he would come
39 home week-ends. He went home regularly every week-end (except the two week-ends referred to
40 in the stipulation heretofore quoted when he had to work) regardless of whether or not there were
41 any parts to be picked up on Spokane for his employer. Mr. Mathieson, his supervisor, Vincent
42 Minice, and a mechanic, all lived together at Moses Lake. Mr. Minice and the mechanic left for
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1 Seattle every Friday shortly after noon and Mr. Minice authorized the deceased to leave at the same
2 time to go to Spokane. Mr. Minice testified that he did not think the company had knowledge of the
3 fact that he had authorized the deceased to take Friday afternoons off with pay and that this
4 arrangement was not intended to compensate the deceased for occasionally picking up machinery
5 parts in Spokane and that he was permitted to take Friday afternoons off whether or not he was to
6 pick up any parts. He further testified that there was no emergency involved in connection with the
7 parts Mr. Mathieson picked up on the week-end of his death, that the parts were not actually used
8 until three or four weeks later, that, if the deceased had not been going to Spokane, the parts would
9 have been shipped to the job site by bus or freight and that the deceased received no mileage for
10 using his personal car nor was he paid for any work on Saturday or Sunday. The record further
11 establishes that the deceased purchased machinery parts in Spokane for his employer on the
12 following dates: December 10, 1954, December 24, 1954, January 8, 1955, February 4, 1955,
13 February 5, 1955, August 20, 1955, August 26, 1955, September 10, 1955, September 16, 1955,
14 September 23, 1955, September 24, 1955, September 29, 1955, October 14, 1955, October 22,
15 1955, and October 29, 1955. The cost of the parts purchased by the deceased on October 29,
16 1955, was \$7.66. At about dusk on the evening of October 30, 1955, the deceased was observed
17 about two miles east of Cheney driving his car in an erratic manner in a westerly direction on U. S.
18 Highway No. 10. He continued driving on U. S. Highway No. 10 in that manner to and through the
19 city of Cheney. Less than a mile west of Cheney, the deceased, in passing another west-bound
20 car, drove his car into the east-bound lane of traffic on U. S. Highway No. 10 where he collided
21 "head on" with an east-bound car and sustained the injuries which resulted in his death. Empty
22 beer bottles, an empty whiskey bottle and a partially filled bottle of whiskey were found in the
23 deceased's car and an alcohol blood test made in connection with an autopsy performed on the
24 deceased's body disclosed an alcoholic content of 00.280 percent. It was stipulated by the parties
25 "that any individual showing an alcoholic content in the blood of 00.280 percent would be under and
26 affected by the use of intoxicating liquor."

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40 Assuming that the deceased workman's trip to Spokane on the week-end of his death
41 furthered his employer's interest to some extent, at least, the fact remains that the motivating factor
42 in his making the trip was clearly personal. Insofar as we have been able to determine our supreme
43 court has never specifically considered the problem of dual purpose trips, although the court did
44 state in the recent case of Luntz v. Department of Labor and Industries, 150 Wash. Dec. 261, that
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1 the evidence in that case did not show that, in making a trip, "the employee was actuated to any
2 extent by a purpose to serve the employer's business." (Emphasis added). In so stating, the court
3 implied, at least, that the motivating influence in making the trip was an important factor in
4 determining whether or not the workman was in the course of his employment. This is in line with
5 the general rule with respect to dual purpose trips, which is stated as follows in Larson's Workmen's
6 Compensation Law, Vol I, p. 240:

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10 "Injury during a trip which serves both a business and personal purpose
11 is within the course of employment if the trip involves the performance of
12 a service for the employer which would have caused the trip to be taken
13 by someone even if it had not coincided with the personal journey. This
14 principle applies to out-of-town trips, to trips to and from work, and to
15 miscellaneous errands such as visits to bars and restaurants motivated
16 in part by an intention to transact business."
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18 A leading case illustrating the principle above quoted is Marks v. Gray, 251 N.Y. 90, 161 N.
19 E. 181, in which Judge Cardoza stated:

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21 A servant in New York informs his master that he is going to spend a
22 holiday in Philadelphia, or perhaps at a distant place, at San Francisco
23 or at Paris. The master asks him while he is there to visit a delinquent
24 debtor and demand payment of a debt. The trip to Philadelphia, the
25 journey to San Francisco or to Paris, is not a part of the employment. A
26 different question would arise if performance of the service were to
27 occasion a detour, and in the course of such detour the injuries were
28 suffered...
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30 "We do not say that service to the employer must be the sole cause of
31 the journey, but at least it must be a concurrent cause. To establish
32 liability, the inference must be permissible that the trip would have been
33 made though the private errand had been canceled...
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35 The test in brief is this: If the work of the employee creates a necessity
36 for travel, he is in the course of his employment though he is serving at
37 the same time some purpose of his own. If, however, the work has had
38 no part in creating the necessity for travel, if the journey would have
39 gone forward though the business errand had been dropped, and would
40 have been canceled upon failure of the private purpose, though the
41 business errand was undone, the travel is then personal, and personal
42 the risk."
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44 In commenting on the above quoted "lucid" formula, Larson states (pages 243 & 244):

45 "In Marks v. Gray, a plumber's helper who was going to drive to a
46 neighboring town to meet his wife, was asked by his employer to fix
47 some faucets there...a trifling job which would not in itself have

1 occasioned the trip. In applying the test, Judge Cardozo concluded that,
2 if at the last minute word had come that the faucets no longer needed
3 fixing, the trip would nevertheless have gone forward, while if the
4 necessity of meeting his wife had disappeared, the employee would not
5 have made the trip to fix the faucets. Another leading case applying this
6 test is Barrager v. Indus-trial Commission, 205 Wis. 550, 238 N. W. 368,
7 78 A.L.R. 679 in which a salesman, who was about to travel from
8 Milwaukee to northern Wisconsin to bring back his family from a
9 vacation trip, was asked by his employer to make two business calls
10 along the route. He made the calls on his trip out, and also made one
11 on his way back; then while on the regular route home he was involved
12 in an accident. Compensation was denied in both cases, as it was also
13 in Mandell's case, 322 Mass. 328, 77 N.E. 2d 308, in which the
14 president of the employer corporation took a trip to Mexico with his wife
15 at the expense of the corporation at a time when he was in poor health.
16 While in Mexico, he acquired fifty dollars worth of goods for the
17 corporation and a gastro-intestinal illness for himself, for which he
18 sought compensation. The court concluded that the real motive for
19 making the trip was claimant's health and not the purchase of fifty
20 dollars worth of goods."
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22 Included in the cases cited in Larson's Workmen's Compensation Law (1957 Cumulative
23 Supplement) as following the test above discussed is the case of George T. Williams & Sons v.
24 Coffey, (Ky.) 243 S. W. (2d) 661 [1957], which is almost identical with the case here under
25 consideration. In that case, an employee left work about an hour early on Saturday, because the
26 drilling had stopped due to bad valves. He was killed in an accident while rushing to a train for his
27 normal trip home on week-ends. He was also to procure replacement parts for the drilling operation,
28 but the court held he was not in the course of his employment and denied compensation.
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32 Applying the rule in Marks v. Gray to the facts in this case, it is evident that the deceased's
33 real motive in making the trip to Spokane was to spend the weekend with his wife and not to
34 purchase \$7.66 worth of parts for his employer. If the necessity of purchasing the parts had
35 disappeared, the deceased would have nevertheless made the trip to spend the week-end with his
36 wife; while if the necessity of journeying to Spokane to see his wife had disappeared, the
37 deceased would not have made the trip to purchase the parts. This is borne out by the fact that
38 during the period of a little over one year that the deceased was employed on the Moses Lake job,
39 he went to Spokane every weekend, with the exception of two week-ends, to see his wife, while he
40 only purchased parts for his employer on fourteen week-ends. It is also borne out by the
41 undisputed testimony of the deceased's supervisor that there was no emergency involved in
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1 obtaining the parts which Mr. Mathieson purchased on the week-end of his death and, if he had not
2 been going to Spokane, the parts would have been ordered and shipped to Moses Lake by bus or
3 freight. Furthermore, it is obvious that the employer would not have sent an employee to Spokane
4 solely to buy \$7.66 worth of parts for which there was no immediate need. The board concludes
5 therefore that the deceased was not in the course of his employment at the time of his death and
6 that his widow's claim was properly rejected by the department.
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10 Although the board is convinced that the petitioner's claim was properly rejected on the
11 ground that the deceased was not in the course of his employment at the time of his death, the
12 statute (R.C.W. 51.52.106) requires that the board's decision "shall contain findings and conclusions
13 as to each contested issue of fact and law" and we will therefore consider the department's
14 contention that the petitioner is not entitled to relief on the further ground that the deceased
15 workman was engaged in the commission of a crime at the time of his death.
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19 R.C.W. 51.32.020 provides that:

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21 "If injury or death results to a workman from the deliberate intention of
22 the workman himself to produce such injury or death, or while the
23 workman is engaged in the attempt to commit, or the commission of a
24 crime, neither the workman nor the widow, widower, child, or dependent
25 of the workman shall receive any payment whatsoever out of the
26 accident fund."
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28 A "crime" is defined in R.C.W. 9.01.020 as follows:

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30 "A crime is an act or omission forbidden by law and punishable upon
31 conviction by death, imprisonment, fine or other penal discipline. Every
32 crime which may be punished by death or by imprisonment in the state
33 penitentiary is a felony. Every crime punishable by a fine of not more
34 than two hundred and fifty dollars, or by imprisonment in a county jail for
35 not more than ninety days, is a misdemeanor. Every other crime is a
36 gross misdemeanor."
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38 R.C.W. 46.56.010 provides as follows:

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40 "It is unlawful for any person who is under the influence of or affected by
41 the use of intoxicating liquor or of any narcotic drug to drive or be in
42 actual physical control of any vehicle upon the public highways.
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44 "In any criminal prosecution for a violation of the provisions of this
45 section relating to driving of vehicle while under the influence of
46 intoxicating liquor, the amount of alcohol in the defendant's blood at the
47 time alleged showed by chemical analysis of the defendant's blood,

1 urine, breath, or other bodily substance shall give rise to the following
2 presumptions:...

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4 "...If there was at that time 0.15 percent or more by weight of alcohol in
5 the defendant's blood, it shall be presumed that the defendant was
6 under the influence of intoxicating liquor.
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8 "...Upon the first conviction of the violation of the provisions of this
9 section the court shall impose a fine of not less than fifty dollars or more
10 than five hundred dollars and not less than five days or more than one
11 year in jail, and shall, in addition thereto, suspend the operator's license
12 of such person for not less than thirty days...."
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14 In a brief filed with the board, counsel for the widow conends that, in enacting R.C.W.
15 51.32.020, "It is patently obvious to us that the legislature was referring to crimes which are malum
16 per se, such as felonies, and was not referring to misdemeanors, gross or otherwise, which are
17 violations of the traffic code" and relies on the case of Van Riper v. Constitutional Government
18 League, 1 Wn. (2d) 635 in support of that contention. In the board's opinion, the Van Riper case is
19 not controlling on the issue here presented because, in that case, the court was interpreting a
20 private insurance contract and not a statute. In that case the court held that the language of an
21 insurance policy must be construed in its ordinary and popular sense and that standard definitions
22 of the word "criminal" and "crime" would give a layman the impression that the word "criminal" refers
23 to a "wicked or heinous act." The court in that case was attempting to determine the intention of the
24 parties to a contract, while in this case we are concerned with the interpretation of a statue. The
25 definition of a "crime" as contained in R.C.W. 9.01.020 has remained unchanged since adoption of
26 the criminal code in 1909 (Laws of 1909, Ch. 249.Sec. 1). The provision excluding workmen who
27 are injured while "engaged in the attempt to commit, or the commission of a crime" from coverage
28 under the workmen's compensation act was inserted in the act in 1927 (Laws of 1927, Ch. 310,
29 Sec. 5) and it must be assumed that, in using the word "crime" in that act, the legislature had in
30 mind the statutory definition of crime as heretofore quoted. Our supreme court has held that "when
31 the legislature uses term without defining it, if such term has a well-known meaning at common law,
32 it will be presumed that the legislature used the word in the sense in which it was understood at
33 common law." Northern Pacific Railway Company v. Henneford, 9 Wn. (2d) 18. At common law a
34 crime is considered as "any act or omission which is forbidden by law, to which a punishment is
35 annexed, and which the state prosecutes in its own name. The word 'crime' of itself, includes every
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1 offense from the highest to the lowest 'misdemeanors,' as well as treason and felony." 14 Am. Jur
2 Criminal Law Sec. 2, p. 753. If it is to be presumed that the legislature used a word or term in the
3 sense in which it was understood at common law, in the absence of a statutory definition, it would
4 follow, a fortiori, that, if the word or term is defined by statute, it had in mind such statutory
5 definition.
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9 Driving a motor vehicle while under the influence of intoxicating liquor is a "crime" as defined
10 in R.C.W. 9.01.020 and it is undisputed that the deceased in this case was driving a motor
11 vehicle while under the influence of intoxicating liquor. It necessarily follows, therefore, that his
12 widow is not entitled to benefits under the workmen's compensation act by reason of the provisions
13 of R.C.W. 51.32.020.
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16 **FINDINGS OF FACT**

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18 In view of the foregoing, and after reviewing the entire record herein, the board finds as
19 follows:
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- 21 1. The petitioner, Olive V. Mathieson, surviving widow of Robert Tweedy
22 Mathieson, deceased, filed a claim for a widow's pension with the
23 department of labor and industries alleging that her husband had been
24 killed in an automobile accident near Cheney, Washington, on October
25 30, 1955, while in the course of his employment with the Valley
26 Construction Company. On January 24, 1956, the supervisor of
27 industrial insurance issued an order rejecting her claim for a pension.
28 On March 15, 1956, the petitioner filed a notice of appeal to this board
29 from the supervisor's order and on April 5, 1956, this board issued an
30 order granting the appeal.
31
- 32 2. The deceased workman, Robert Tweedy Mathieson, sustained fatal
33 injuries when the motor vehicle he was driving from Spokane,
34 Washington, to Moses Lake, Washington, collided with another
35 vehicle on U. S. Highway No. 10 near Cheney, Washington, at about
36 5:00 p.m. on October 30, 1955.
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- 38 3. Mr. Mathieson had been employed by the Valley Construction
39 Company as a mechanic's helper on a job at Moses Lake, from
40 October 21, 1954, to the date of his death. During this period he
41 maintained his home at Spokane, where his wife resided and he spent
42 all but two of his week-ends at his home in Spokane. On approximately
43 twelve of these week-ends prior to the week-end of his death, the
44 deceased purchased machinery parts in Spokane for his employer
45 and delivered the parts to the job site in Moses Lake in time to return to
46 work on Monday morning.
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- 1 4. On October 29, 1955, the deceased purchased parts in Spokane for his
2 employer at a cost of \$7.66 and these parts were found in his vehicle
3 after the accident on October 30, 1955. There was no emergency
4 requiring immediate delivery of these parts and they were not actually
5 used until three or four weeks later.
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- 7 5. The deceased received no compensation for buying parts for his
8 employer in Spokane and he received no compensation for use of his
9 private automobile in driving from Moses Lake to Spokane and return.
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- 11 6. In driving to Spokane on Friday, October 28, the deceased was
12 actuated by purely personal motives; the purchase of parts for his
13 employer was incidental and he would have made the trip to Spokane
14 whether or not parts were to be purchased for the employer. Further,
15 the employer would not have sent an employee to Spokane to
16 purchase the parts if the deceased had not made the trip for personal
17 reasons.
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- 19 7. The deceased was under the influence of, and affected by, the use of
20 intoxicating liquor at the time of his fatal accident.
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- 22 8. The deceased was not in the course of his employment at the time of
23 his fatal accident.
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CONCLUSIONS OF LAW

25 Based on the foregoing findings of fact, the board concludes:
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- 27 1. This board has jurisdiction of the parties and subject matter of this
28 appeal.
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- 30 2. The deceased was not in the course of his employment at the time of
31 his fatal injury on October 30, 1955.
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- 33 3. At the time the claimant was killed in an automobile accident on
34 October 30, 1955, he was engaged in a commission of a crime,
35 namely, driving a vehicle upon the roads of this state while under the
36 influence of liquor.
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- 38 4. The order of the supervisor of industrial insurance dated January 24,
39 1956, from which this appeal was taken is correct and should be
40 sustained.
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ORDER

Now, therefore, it is hereby **ORDERED** that the order of the supervisor of industrial insurance dated January 24, 1956, be, and the same is hereby, sustained.

Dated this 28th day of January, 1958.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
J. HARRIS LYNCH Chairman

/s/ _____
ARTHUR BORCHER Member

/s/ _____
RICHARD E. CALLAHAN Member