Rice, Sharon

COVERAGE AND EXCLUSIONS

Social events

A worker engaged in activities related to preparation of an employer's social event is not participating in a social event within the meaning of the exclusion from coverage contained in RCW 51.08.013(b). **….*In re Sharon Rice*, BIIA Dec., 07 18132 (2008)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: SHARON L. RICE	)	**DOCKET NO. 07 18132**
	)	
CLAIM NO. SB-48708	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Sharon L. Rice, by
Prediletto, Halpin, Scharnikow & Nelson, P.S., per
Greg S. Nelson

Self-Insured Employer, Anderson Hay & Grain Company, Inc., by
Eims & Flynn, P.S., per
Wm. Andrew Myers

The claimant, Sharon L. Rice, filed an appeal with the Board of Industrial Insurance Appeals on July 23, 2007, from an order of the Department of Labor and Industries dated July 12, 2007. In this order, the Department denied the claim on the grounds that the claimant was not in the course of employment at the time of the alleged injury. The Department order is **REVERSED AND REMANDED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order issued on April 9, 2008, in which the industrial appeals judge affirmed the Department order dated July 12, 2007. All contested issues are addressed in this order.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.

We have granted review because we disagree with our industrial appeals judge's analysis as set forth in the Proposed Decision and Order. Our industrial appeals judge affirmed the order in which the Department rejected this claim on the grounds that the claimant was not in the course of her employment at the time of the injury. We find, on this record, that the claimant was in the course of her employment at the time of the injury and remand the matter to the Department to determine claim allowance.

The controversy in this matter focuses on a Christmas party given by the employer, Anderson Hay & Grain Company, Inc. (Anderson Hay), and whether the activities in preparation for the party on a Saturday morning should be considered work in the course of employment so as to

extend coverage under the Industrial Insurance Act to Ms. Rice. The claimant argues that she was "acting in the course of employment" by furthering the employer's business and that the Saturday morning activity in preparation of the Christmas party that evening was not a social activity or party as defined in RCW 51.08.013(b) so as to exclude her activities from the Industrial Insurance Act. The self-insured employer, Anderson Hay, argues that the Saturday morning activities meet the definition of party or social activity and that those events are excluded from coverage under the provisions of RCW 51.08.013(b), and that Ms. Rice was not "in the course of her employment" in that she was not furthering the interest of her employer, nor was she acting at the direction of her employer at the time she was injured on Saturday morning.

Four witnesses testified in this matter. Sharon Rice, the claimant, testified, as well as her husband, Willie Rice. They testified regarding Ms. Rice's activities on the Saturday morning in question, as well as the nature of the Christmas party which they attended. Additionally, Amy Shiner, the administrative assistant for the Chief Executive Officer of Anderson Hay, testified, as did Rachel Carlson, the Human Resource (HR) assistant for the company.

Anderson Hay had, for a number of years, sponsored a Christmas party which appears to be an end of the year recognition party for the employees. The party was not on the employer's premises. The party's location was at the event center at the Kittitas County Fairgrounds. The party consisted of a live band and dancing, as well as a buffet dinner and an open bar for which the employer provided two tickets for the first two drinks. Additionally, Anderson Hay used the opportunity to address the employees, thank them for their service, and give out awards. Anderson Hay also provided chauffeured transportation to and from the event for those who requested it.

Planning for the party was done on company time during the workweek by three committee members. Amy Shiner, the assistant to the CEO, and Rachel Carlson, the HR assistant, were on the committee. The party was set for a Saturday evening. However, the committee was required to set up the banquet facility on Saturday morning. Ms. Shiner sent a company e-mail the week prior to the party, indicating that she and the committee would need additional help setting up the event. They would be setting it up on Saturday morning at 10:00. If they stayed through the noon hour, food in the form of refreshments or snacks would be provided. The e-mail is Exhibit No. 2 to the record.

All of the witnesses made it quite clear that there was no requirement for any employee to go on Saturday morning to help set up for the party. It is equally clear that nobody was paid any additional compensation for their time on Saturday morning. Additionally, Ms. Rice's work schedule

was 7:00 a.m. to 4:00 p.m., Monday through Friday. She did not work on Saturdays. The party was not mandatory and there would be no negative action taken against an employee who did not attend the party. However, Rachel Carlson, the HR assistant for Anderson Hay, testified that Amy Shiner, who was in charge of a number of things for the company, including planning the party, was required to be at the facility setting it up on Saturday morning.

Ms. Rice responded to Amy Shiner's e-mail and arrived at the Kittitas County event center at approximately 10:00 on the Saturday morning of the party. She was there to assist in arranging the tables and setting up decorations for the 7:00 p.m. start of the party that evening. As she was entering the door to the building at the Kittitas County Fairgrounds, she slipped on the ice and fell, hitting her head fairly hard on the ground. She was bleeding from the head and went to the hospital for treatment.

On these facts, our industrial appeals judge found that the activities Ms. Rice was engaged in on Saturday morning did not meet the definition of a social activity or party, as defined in RCW 51.08.013(b). We concur in this analysis. RCW 51.08.013(b) provides:

> An employee's participation in social activities, recreational or athletic activities, events, or competitions, and parties or picnics, whether or not the employer pays some or all of the costs thereof, unless: (i) The participation is during the employee's working hours, not including paid leave; (ii) the employee was paid monetary compensation by the employer to participate; or (iii) the employee was ordered or directed by the employer to participate or reasonably believed the employee was ordered or directed to participate.

The Saturday morning activities were in anticipation of the social activity or party that evening. There is no evidence in this record to indicate that the Saturday morning activities were a social event. On the contrary, Amy Shiner's e-mail is asking for help preparing for the event. We find on this record that the Saturday morning activities were work activities, not social activities excluded from coverage by RCW 51.08.013(b).

Our industrial appeals judge, however, excluded Ms. Rice from coverage because he found that she was not "in the course of her employment" at the time of her injury. He found that the employer's interest was not sufficiently furthered to find that Ms. Rice's participation in the decorating of the event hall for the party was "in the course of her employment" with Anderson Hay. We disagree with this analysis.

RCW 51.08.013 defines "acting in the course of employment." Section (1) provides:

> "Acting in the course of employment" means the worker acting at his or her employer's direction or in the furtherance of his or her employer's business which shall include time spent going to and from work on the jobsite, as defined in

> RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except parking area. It is not necessary that at the time an injury is sustained by a worker he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.

Larson, at §27.01, discusses a situation where one co-employee assists another co-employee in his work. *Larson* states:

> The modern rule brings within the course of employment any activity undertaken in good faith by one employee to assist a co-employee in the latter's performance of his work. Some of the older cases denied recovery unless the claimant could show that, by helping the co-employee, the claimant advanced his or her own particular work; but the great majority of newer cases impose no such limitation.

In *Ball-Foster Glass Container Company v. Giovanelli*, 163 Wn.2d 133 (2008), the court addressed the course of employment issue as it related to the traveling employee doctrine. In discussing the course of employment doctrine, the court stated:

> As stated by the United States Supreme Court, "the statutory phrase 'arising out of and in the course of employment,' which appears in most workmen's compensation laws, is deceptively simple and litigiously prolific." *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 479, 67 S. Ct. 801, 91 L. Ed. 1028 (1947).
>
> Although each case must be resolved in view of the particular facts, over time a number of intermediate standards for evaluating whether an injury occurs "in the course of employment" have developed as courts apply this statutory language to cases presenting similar fact patterns. *See Ridgway v. Combined Ins. Co. of Am.*, 98 Idaho 410, 414, 565 P.2d 1367 (1977) (Bistline, J., concurring). Several doctrines address situations in which an employee is injured while off the employer's premises and/or not actually engaged in work duties. The common principle underlying each of these doctrines is that it is generally not necessary that a worker was actually performing the duties for which he or she was hired at the time of an accident in order for an injury to be compensable. It is sufficient if the injury arises out of a risk that is sufficiently incidental to the conditions and circumstances of the particular employment. In doubtful cases, the act is to be construed liberally in favor of compensation for the injured worker. *McIndoe v. Department of Labor & Indus*., 144 Wn.2d 252, 257, 26 P.3d 903 (2001).

The facts on this record, which bear on whether Ms. Rice was in the course of her employment on the Saturday morning, are: (1) The employer required that the work setting up the venue for the party be done on Saturday morning. (2) Amy Shiner, who is the administrative assistant for the CEO of Anderson Hay and who was in charge of making the arrangements for the

party, was required to work that Saturday morning and arrange the venue for the party. (3) Amy Shiner used the office e-mail to solicit help from any of the employees of Anderson Hay who would be available for that Saturday morning. She specifically offered refreshments and/or food if the work continued through the noon hour. (4) This event appears to be a major event for the employer in which the employer apparently used the event to thank employees for their work for the year and give out awards. (5) The employer made every effort to make the party a success by offering transportation to and from the party and providing entertainment, food, and drinks at no charge to the employees.

These facts, when applied to the statutory directive, as well as the analysis offered by Professor Larson and the analysis set forth by our Supreme Court in *Ball-Foster Glass Container Company v. Giovanelli*, lead us to conclude that Ms. Rice was within the course of her employment when she was injured in the slip and fall as she entered the venue at the Kittitas County Fairgrounds. Amy Shiner was required to do the set up work. Amy Shiner used the office e-mail to solicit co-workers to assist in the work. The employer clearly benefited from the fact that the employees were assisting Amy Shiner in the setting up of the party. We see this as a tangible benefit to the employer, who had invested a significant amount of time and money in preparing a major work-related social event for the end of the year. In short, someone had to set up the venue for the party. The employer required Amy Shiner to arrange or do that and Amy Shiner sought help from co-employees. Ms. Rice was one of these co-employees who responded to the employer's request to set up the party at the Kittitas County Fairgrounds on that Saturday morning.

We find that these facts establish that Ms. Rice was injured when she was engaging in activity that was sufficiently incidental to conditions and circumstances of her employment to bring her within the course of her employment when injured. The order in which the Department rejected this claim on the grounds that Ms. Rice was not within the course of her employment at the time of her injury is incorrect and is reversed. This matter is remanded to the Department with instructions to find that Ms. Rice was in the course of her employment when injured and to take further action in accordance with the law and the facts.

FINDINGS OF FACT

1. The claimant, Sharon L. Rice, filed an Application for Benefits with the Department of Labor and Industries on May 14, 2007, in which she alleged she sustained an industrial injury on December 2, 2006, during the course of her employment with Anderson Hay & Grain Company, Inc.

On July 12, 2007, the Department issued an order in which it denied the claim based on a determination that the claimant was not in the course of her employment at the time of the December 2, 2006 incident.

The claimant filed a Notice of Appeal to the July 12, 2007 Department order on July 23, 2007. This Board granted the appeal on September 11, 2007, assigned it Docket No. 07 18132, and ordered that further proceedings be held.

2. On December 2, 2006, the claimant, Sharon L. Rice, was employed by Anderson Hay & Grain Company, Inc., (Anderson Hay) as a dispatch support specialist. Ms. Rice was paid an hourly wage and worked Monday through Friday, 7:00 a.m. to 4:00 p.m.

3. Anderson Hay arranges and pays for an annual Christmas party for its employees. The party is planned by a committee of employees whose time committed to the planning is considered work time and is compensated. The 2006 party was scheduled for the evening of December 2, 2006, a Saturday.

4. The December 2, 2006 Christmas party was held off of Anderson Hay's premises, at the Kittitas County Fairgrounds.

5. Prior to December 2, 2006, Amy Shiner, the assistant to the CEO of Anderson Hay, sought assistance from employees of Anderson Hay in preparing the party location the morning of December 2, 2006. Amy Shiner was required to work on Saturday, December 2, 2006, in preparing the party location.

6. Ms. Rice responded to Amy Shiner's request for help by traveling to the event site on the morning of December 2, 2006, intending to assist with the pre-party decorating. Just outside the event center, she slipped on the ice, striking her head. Ms. Rice required medical treatment for the injury to her head.

7. On December 2, 2006, at the time of her fall, Ms. Rice was engaged in activity which benefited her employer and which was sufficiently incidental to the circumstances of her employment as to bring her within the course of her employment with Anderson Hay.

CONCLUSIONS OF LAW

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

2. On the morning of December 2, 2006, when Ms. Rice slipped and fell on the ice, she was acting in the course of her employment with Anderson Hay & Grain Company, Inc., as defined in RCW 51.08.013.

3. The order of the Department of Labor and Industries dated July 12, 2007, is incorrect and is reversed. This matter is remanded to the Department with instructions to find that Ms. Rice was in the course of her employment when injured on December 2, 2006, and to take further action consistent with the law and the facts.

It is **ORDERED**.

Dated: June 26, 2008.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
THOMAS E. EGAN Chairperson

/s/_____
FRANK E. FENNERTY, JR. Member

/s/_____
CALHOUN DICKINSON Member