

Maier, Christine

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

Resident workers

An apartment manager who is on call 24 hours per day and has no fixed work hours is in the course of employment during the entire period of her presence on the premises. ...*In re Christine Maier*, BIIA Dec., 18,224 (1963)

Scroll down for order.

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

1 **IN RE: CHRISTINE MAIER**) **DOCKET NO. 18,224**
2)
3 **CLAIM NO. C-839491**) **DECISION AND ORDER**
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5 **APPEARANCES:**

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7 Claimant, Christine Maier, by
8 Walthew, Warner & Keefe, per
9 Charles F. Warner and Eugene Arron

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11 Employer, William Cloes,
12 Pre se

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Thomas O'Malley and Ronald H. Mentele, Assistants
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18 This is an appeal filed by the claimant, Christine Maier, on July 19, 1962, from an order of
19 the supervisor of industrial insurance dated July 9, 1962, rejecting her claim for benefits under the
20 workmen's compensation act on the ground that the claimant was "not under the industrial
21 insurance act." **REVERSED AND REMANDED.**
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24 **DECISION**

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26 On July 17, 1963, Hearing Examiner Jean R. Sherrard issued a Proposed Decision and
27 Order finding that at the time of her injury the claimant was not performing the duties of a janitor,
28 maintenance man or chamber maid, and was not in the course of her employment with William
29 Cloes, from which he concluded that the claimant was not engaged in employment covered under
30 the compulsory provisions of the workmen's compensation act at the time of her injury on August
31 28, 1961, and that the order of the supervisor of industrial insurance rejecting her claim should be
32 sustained. The claimant filed a statement of exceptions within the time required by law to the
33 findings above-mentioned and to the conclusions and decision and order as being based on "an
34 erroneous interpretation of the law."
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37 It is the claimant's contention that she was engaged in employment classified as extra-
38 hazardous by R.C.W. 51.12.010, which includes:
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40 "....janitors, chambermaids, porters, ..and maintenance men employed
41 in apartment houses,..."
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1 It appears from the statement of the department's counsel at the conclusion of the claimant's
2 testimony in this case that the claimant's claim was rejected because the information in the
3 department file indicated that the claimant "merely collected rent, answered the phone and made
4 bank deposits." However, after the presentation of the testimony of the employer at a subsequent
5 hearing and the department rested its case, its counsel stated that the department's position was
6 that the claimant was not covered under the provisions of 15.12.010 because "there has been no
7 showing that Mrs. Maier was in fact the employee hired and that she has voluntarily assumed the
8 duties of the employee hired, that there has been no showing that she was under it, since the duties
9 she has listed have been voluntary and not those of the hired employee."

10 The record, in our opinion, clearly establishes that the claimant and her husband were jointly
11 employed by Mr. William Cloes (as found by the Hearing Examiner in his Proposed Decision and
12 Order) as resident managers in a 16-unit, 3-story apartment house in Seattle; that their duties
13 involved routine maintenance and janitorial services in addition to renting apartments, collecting
14 rents and being on the premises to represent the owner, for which services they received a rent-
15 free apartment.

16 Mr. Maier was regularly employed elsewhere during the daytime, and most of the duties of
17 managing and maintaining the apartment house devolved upon Mrs. Maier. She testified that she
18 was on duty 24 hours a day, that she cleaned halls, washed windows, took care of the furnace,
19 cleaned the laundry room, cleaned vacated apartments, including painting "whatever I could reach,"
20 replaced fuses and light bulbs, collected rents, deposited receipts and paid certain bills by check as
21 authorized by Mr. Cloes.

22 The only duties that Mr. Cloes stated that Mr. and Mrs. Maier were not required to perform
23 were cleaning and painting apartments. He conceded that they actually did this work and stated
24 that he "appreciated the fact that they did" and that "I am not going to criticize them for doing more
25 than they have to." Further, he admitted that Mr. and Mrs. Maier were required to perform other
26 janitorial duties, such as cleaning the halls and taking care of the furnace. While the rent-free
27 apartment he considered which Mr. and Mrs. Maier received for their services, it was also a
28 necessary requirement that they live in the apartment, that is, as stated by Mr. Cloes "it is
29 necessary that someone is there, particularly in the evening." (Emphasis added).

1 On October 28, 1961, Mrs. Maier had collected \$375.00 in rent money after the banks had
2 closed and she placed the money in a "special place" in a closet, known only to her, her husband,
3 and Mr. Cloes. That evening while Mrs. Maier was alone in the apartment, a man came to her door
4 and demanded "the money." She stated she had no money and the intruder struck her. She
5 attempted to defend herself with a chair, but he twisted her left arm, breaking her arm, and she
6 "passed out." He then "tore the whole apartment upside down and he found the money."
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10 The Board's Hearing Examiner concluded, in affect, that the claimant was not in the course
11 of her extra-hazardous employment at the time of her injury as she was not engaged in the
12 performance of janitorial or maintenance duties at that time. This approach to the legal problem
13 presented, in our opinion, overlooks the well established "resident employee" rule, which is stated
14 in Larson on the Law of Workmen's Compensation (Volume 1, Sec. 24.00) as follows:
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18 "When an employee is required to live on the premises, either by his
19 contract of employment or by the nature of the employment, and is
20 continuously on call (whether or not actually on duty), the entire period
21 of his presence on the premises pursuant to this requirement is deemed
22 included in the course of employment. However, if the employee has
23 fixed hours of work outside of which he is not on call, compensation is
24 awarded usually only if the source of injury was a risk associated with
25 the conditions under which claimant lived because of the requirement of
26 remaining on the premises."
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28 The claimant, in the case here under consideration, was required to live on the premises, was
29 continuously on call and had no fixed hours of work, so that under the rule above quoted she would
30 have to be considered as having been in the course of her employment at the time of her injury
31 even if her injury had not been related in any manner to the duties of her contract of employment.
32 In addition, in this case, the claimant was obviously the victim of a work-connected assault, having
33 been injured while trying to protect her employer's funds.
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36 We conclude, therefore, that the claimant was covered under the compulsory provisions of
37 the workmen's compensation act at the time of her injury and that the supervisor's order rejecting
38 her claim should be reversed.
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40 **FINDINGS OF FACT**

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42 In view of the foregoing, and after reviewing the entire record herein, the Board finds as
43 follows:
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- 45 1. The claimant, Christine Maier, filed areport of accident with the
46 department of labor and industries on November 30, 1961, alleging that
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1 she sustained an injury as the result of an assault by a burglar in the
2 course of her employment with William Cloes on August 28, 1961. On
3 July 9, 1962, the supervisor of industrial insurance issued an order
4 rejecting the claim for the stated reason that the claimant was "not under
5 the industrial insurance act." On July 19, 1962, the claimant filed a
6 notice of appeal with this Board, and the appeal was granted by a Board
7 order dated August 3, 1962.

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- 9 2. At the time of her injury on August 28, 1961, and for some time prior
10 thereto, the claimant and her husband were jointly employed by Mr.
11 William Cloes as resident managers of a 3-story apartment house in
12 Seattle. Their duties involved routine maintenance and janitorial
13 services and in addition, renting apartments, collecting rents, depositing
14 the rents collected in a bank and paying certain bills by check as
15 authorized by Mr. Cloes. Mr. Maier was otherwise employed during the
16 daytime, and most of the duties of managing and maintaining the
17 apartment house devolved upon Mrs. Maier.
- 18 3. Mr. and Mrs. Maier received a rent-free apartment for their services, and
19 the nature of their employment was such that they were required to live
20 on the premises and were on call 24 hours a day.
- 21 4. On August 28, 1961, Mrs. Maier had collected \$375.00 in rent money
22 after the banks had closed and she placed the money in a "special
23 place" in a closet, known only to her, her husband and Mr. Cloes. That
24 evening while Mrs. Maier was alone in the apartment, a man came to
25 the door and demanded "the money." She stated she had no money
26 and the intruder struck her. She attempted to defend herself with a
27 chair, but he twisted her left arm, breaking her arm and she lost
28 consciousness. The burglar then "tore the whole apartment upside
29 down and he found the money."

30 **CONCLUSIONS OF LAW**

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32 Based on the foregoing findings of fact, the Board concludes:

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- 34 1. This Board has jurisdiction of the parties and subject matter of this
35 appeal.
- 36 2. The claimant, Christine Maier, was engaged in employment covered
37 under the compulsory provisions of the workmen's compensation act
38 and was in the course of her employment at the time of her injury on
39 August 28, 1961.
- 40 3. The order of the supervisor of industrial issued herein on July 9, 1962,
41 should be reversed.

42 **ORDER**

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44 Now, therefore, it is hereby ORDERED that the order of the supervisor of industrial insurance
45 issued herein on July 9, 1962, be, and the same is hereby, reversed and the above-numbered
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1 claim is remanded to the department of labor and industries with direction to allow the same, and to
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3 take such further action in connection therewith as may be authorized or required by law.

4 Dated this 31st day of October, 1963,

5 BOARD OF INDUSTRIAL INSURANCE APPEALS
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10 J. HARRIS LYNCH Chaiperson

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13 R. H. POWELL Member
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17 HAROLD J. PETRIE Member
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