

Thurlow, Al, Dec'd

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

Intoxication

A watchman with a blood alcohol content of .29 was held to have abandoned the course of his employment where medical testimony indicated that such a high level of blood alcohol causes marked impairment in all people and lay testimony indicated that just prior to his death the worker's "walk was not normal, ... he seemed to weave, his actions seemed different, and he did not respond to the usual 'hello'." The only reasonable inference to be drawn from the evidence was that the worker fell into the water and drowned solely because of his state of intoxication. ...*In re Al Thurlow, Dec'd, BIIA Dec., 20,254 (1967)*

Scroll down for order.

1 about 4:15 P.M. There were no witnesses to the fall into the water and the record is silent as to the
2 reasons which compelled him to the site from which he fell. Nor do we have any knowledge as to
3 the exact physical site from which he fell.
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5 An autopsy was performed on the deceased's body on December 30, 1962, and the autopsy
6 surgeon made, as one of his final diagnoses, the diagnosis of acute alcoholism. A blood sample
7 was removed from the body by the autopsy surgeon and revealed, in tests performed by a medical
8 technologist, that the deceased had a reading for ethyl alcohol content of .29.
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10 It is the testimony of competent medical witnesses that a blood alcoholic content of .29
11 causes marked impairment in all people. It causes a very significant impairment with respect to a
12 person's ability to show their normal judgment in reasoning; they will show marked impairment with
13 respect to their ability to see; with respect to their normal ability to hear; and with respect to their
14 normal ability to speak. All such individuals will have some impairment with respect to ability to
15 walk, turn, stand or sit on command, and some people with this blood concentration will be so
16 severely influenced that they are comatose at this time and they will not respond to any stimuli.
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18 The deceased workman was seen at approximately 4:00 P.M. by fellow workmen who
19 observed that his walk was not normal, that he seemed to weave, his actions seemed different, and
20 he did not respond to the usual "hello."
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22 The normal route which the deceased would have taken as a watchman on December 29,
23 1962, would not have taken him near the water's edge unless some unusual occurrence had
24 attracted his attention and he had gone there to investigate. The record is silent, as we have said
25 previously, with respect to why he departed from his usual route and approached the water's edge.
26 Whether he was compelled to the location from which he fell as a consequence of investigating
27 some circumstance related to his employment, or whether he wandered there in the intoxicated
28 state, is not really material as we are persuaded from this record that the only reasonable inference
29 which can be drawn is that the workman fell into the water and was drowned solely because of his
30 state of intoxication and that he, at the time of his fall and death, had removed himself from the
31 course of his employment.
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33 We believe it is patently clear from all of the testimony in this record that the deceased
34 workman was acutely intoxicated on November 29, 1962, and the conclusion is inescapable that his
35 death was solely and directly the result of his intoxicated condition -- there being no other plausible
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1 reason suggested in the record before us as to why he would have fallen into the water and
2 subsequently drowned.
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4 In this Board's opinion, therefore, the Supervisor's order dated June 24, 1963, allowing this
5 claim for benefits under the Act, is incorrect and should be reversed.
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7 **FINDINGS OF FACT**

8 After a careful review of the record, the Board finds as follows:
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- 10 1. On January 18, 1963, Mary Doris Thurlow, widow of Alpheus A.
11 Thurlow, filed a claim for a widow's pension with the Department of
12 Labor and Industries alleging that her husband met his death while in
13 the course of employment with the Scott Paper Company on December
14 29, 1962. On April 8, 1962, the Supervisor of Industrial Insurance
15 entered an order approving the widow's claim. On April 12, 1963, the
16 Supervisor entered an order holding the claim in abeyance, pending
17 further investigation. On May 20, 1963, the employer appealed to this
18 Board from the Supervisor's order of April 8, 1963, allowing the claim,
19 and the Board, on June 18, 1963, denied the appeal for the reason that
20 there was no appealable order in view of the Supervisor's order of April
21 12, 1963, holding the claim in abeyance. On June 24, 1963, the
22 Supervisor entered an order cancelling the order of April 12, 1963, and
23 allowing the widow's claim for pension. On July 1, 1963, the employer
24 appealed to this Board and the Board granted the appeal on July 19,
25 1963, and assigned it Docket No. 20,254.
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- 27 2. Subsequent to hearings held in this matter, a hearing examiner issued a
28 Proposed Decision and Order on November 27, 1964. Thereafter,
29 timely Statements of Exceptions were filed by the employer, the
30 claimant and the Department of Labor and Industries.
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- 32 3. The deceased workman, Al A. Thurlow was employed as a clock
33 watchman at the Scott Paper Company on December 29, 1962, and had
34 been so employed for some time prior thereto. His hours of employment
35 on December 29, 1962, were from 4:00 P.M., to midnight. On the
36 afternoon of that day at a time not completely certain, but more probably
37 sometime shortly after 4:16 P.M., the decedent fell into navigable water
38 adjacent to the company plant and died as the result of drowning. There
39 were no witnesses to the accident causing his death, and it is not known
40 from what physical site he fell.
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- 42 4. An analysis of the decedent's blood, removed at an autopsy, disclosed
43 that he had a .29 reading for ethyl alcohol content. This amount of
44 alcoholic content in the blood will cause marked impairment in all
45 persons with respect to their ability to show normal judgment and
46 reasoning, and will impair ability to see, to hear and to speak, and impair
47 the ability to walk, turn, stand and sit on command and in many persons,
will cause them to become comatose so they will not respond to stimuli.

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5. The duties prescribed for the deceased workman on December 29, 1962, required him to traverse a prescribed route through the plant containing approximately 25 stations where he was required to clock in and punch a time clock. Said route took approximately one hour and ten minutes to traverse and in a normal shift, the watchman would be allowed approximately ten minutes to rest before he was required to traverse the same route again. In a normal shift, the clock watchman was required to go over the same route six times punching the time clock at each assigned station. On December 29, 1962, the deceased workman punched the time clock at all but one of the first five time clock stations on time, the last one being punched at approximately 4:16 P.M.
 6. At approximately 4:00 P.M. on December 29, 1962, the decedent was seen by fellow workers who observed that his walk was not normal, that he seemed to weave, that his actions seemed different and that he did not respond to the usual "hello."
 7. The most reasonable inference to be drawn from the record before us, lacking any evidence of any other cause, is that the deceased workman fell into the water adjacent to the plant in which he was employed solely because of his intoxicated state and that his death was due solely to an acute state of intoxication.

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CONCLUSIONS OF LAW

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

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1. This Board has jurisdiction of the parties and the subject matter of this appeal.
 2. The deceased workman was in a state of acute intoxication when he accidentally fell into the water and drowned on December 29, 1962. His death was solely and directly the result of his intoxicated state, and this state of acute intoxication constituted a departure from the course of his employment.
 3. The order of the Supervisor of Industrial Insurance dated June 24, 1963, is incorrect and should be reversed and this claim remanded to the Department of Labor and Industries with direction to deny the claim for widow's benefits.

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It is so ORDERED.

Dated this 17th day of January, 1967.

BOARD OF INDUSTRIAL INSURANCE APPEALS

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/s/ _____
R. H. POWELL Member

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/s/ _____
J. A. PRIEST Member Pro Tem