Hart, Thomas

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

Deviation

A deputy sheriff, eating a meal in a restaurant while on a business trip to pick up a prisoner, did not remove himself from the course of employment when he left his table momentarily to "remonstrate with a group of rowdies" at a nearby table and was assaulted. **….*In re Thomas Hart*, BIIA Dec., 35,767 (1971)**

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: THOMAS G. HART	**)**	**DOCKET NO. 35,767**
	)	
CLAIM NO. F-927241	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Thomas G. Hart, by
Jordan, Britt and Templeman, per
Kenneth E. Phillipps

Employer, Snohomish County,
None

Department of Labor and Industries, by
The Attorney General, per
Patrick McMullen, Assistant

This is an appeal filed by the claimant on May 5, 1970, from an order of the Department of Labor and Industries dated April 1, 1970, which rejected the claim for the reason "1. At the time the injury occurred the claimant was not furthering the interests of his employer and, therefore was not in the course of employment." **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 Statement of Exceptions filed by the Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on December 22, 1970, in which the order of the Department dated April 1, 1970, was reversed and this claim remanded to the Department with direction to allow the claim.

The claimant, a Snohomish County deputy sheriff, was injured on March 3, 1970, within the State of California, while traveling to pick up a prisoner to bring him back to the State of Washington for trial.

The extraterritorial application of the Washington Workmen's Compensation Act is not an issue here. That has already been settled by decisions of the Supreme Court of this state. Hilding v. Department of Labor and Industries, 162 Wash. 168; Gustavson v. Department of Labor and Industries, 187 Wash. 296.

The issue before the Board in this appeal is whether the claimant was in the course of his employment at the time that he was injured on March 3, 1970. The specific ground recited by the Department for the rejection of the claim, that at the time of the injury the claimant was not furthering the interests of his employer, is one of the elements to determine whether claimant was acting in the course of his employment. It is to be noted that in Section 51.08.013, RCW, defining the term "Acting in the Course of Employment," that the claimant must be in furtherance of his employer's business, but it is not necessary that at the time of his injury he be doing the work on which his compensation is based.

This matter was presented to the Board based upon the contents of the Department file and some exhibits. The record establishes that the claimant and a fellow deputy sheriff were en route by automobile to San Francisco to pick up the prisoner. They stopped in Fairfield, California, to spend the night. They checked into their motel, then went to a restaurant for dinner. It is to be noted that at that time they were both in plain clothes. It was after they had seated themselves in the restaurant that the events occurred leading up to the actual injury. It must be acknowledged that at the time that the claimant seated himself in the restaurant to eat dinner, he was in the course of his employment. Larson's Workmen's Compensation Law, § 25.

The injury occurred when the claimant left his table, momentarily, to remonstrate with a group of rowdies seated a short distance away from him, who were using obscene language. After requesting that they tone down their language, the claimant was returning to his table and at that time was attacked and injured by one or more of these rowdies.

The specific issue, therefore, is whether the claimant removed himself from the course of his employment by leaving his table, momentarily, to endeavor to convince the other customers to tone down their language. The Board does not believe that the claimant did remove himself from the course of his employment by this momentary act. In this instance, the circumstances of his employment put him, in what turned out to be, a place of danger, and he was injured. Larson's, supra, § 10.

After consideration of the Proposed Decision and Order and the Statement of Exceptions filed thereto, and a careful review of the entire record before us, we are persuaded that the Proposed Decision and Order is supported by the preponderance of the evidence and is correct as a matter of law.

FINDINGS OF FACT

After a review of the entire record, including the exhibits herein, this Board finds as follows:

1. On March 30, 1970, the claimant, Thomas G. Hart, filed a report of accident with the Department of Labor and Industries alleging that he had sustained an industrial injury on March 3, 1970, while in the course of his employment with Snohomish County. On April 1, 1970, the Department entered an order rejecting the claim for the reason: "1. At the time the injury occurred the claimant was not furthering the interests of his employer and, therefore was not in the course of employment." On May 5, 1970, the claimant appeal to this Board, and on May 28, 1970, the Board granted the appeal and assigned it Docket No. 35,767.

2. Appellate proceedings were conducted before the Board of Industrial Insurance Appeals and on December 22, 1970, a hearing examiner for this Board entered a Proposed Decision and Order in connection with this appeal. Thereafter, within the period of time provided by law, exceptions were filed and the case referred to the Board for review as provided by RCW 51.52.106.

3. That at all pertinent times herein, the claimant was employed by the County of Snohomish, State of Washington, as a deputy sheriff. That shortly prior to March 3, 1970, the claimant, in the company of a fellow deputy sheriff, left the State of Washington, by automobile, to travel to San Francisco, California, to pick up a prisoner to return him to the State of Washington for trial.

4. On the evening of March 3, 1970, the claimant and the fellow employee stopped in Fairfield, California, to spend the night. After checking into their motel, the claimant and the fellow employee went to a restaurant in that city to eat, and seated themselves. Some rowdies, who were seated at a table near to that of the claimant, were using obscene language, and the claimant, thereupon, got up from his table, went over to the table occupied by the rowdies, where he proceeded to mildly remonstrate with them concerning their language, reminded them that there were ladies present, and was in the process of returning to his table when he was attacked by one or more of the rowdies and suffered an injury that required medical treatment.

CONCLUSIONS OF LAW

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

1. This Board has jurisdiction of the parties and subject matter of this appeal.

2. That when the claimant was injured on March 3, 1970, he was in the course of his employment, with Snohomish County.

3. That the order of the Department of Labor and Industries dated April 1, 1970, is incorrect and this matter should be remanded to the Department with directions to allow the claim.

It is so ORDERED.

Dated this 16th day of March, 1971.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
ROBERT C. WETHERHOLT Chairman

/s/_____
R.H. POWELL Member

/s/_____
R.M. GILMORE Member