

Clure, Larry, Dec'd

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

Deviation

Dual purpose doctrine

A worker's detour from his normal business route for personal reasons removed him from the course of employment so that his fatal accident during the personal side trip was not compensable.*In re Larry Clure, Dec'd*, BIIA Dec., 45,077 (1976)

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

1 **IN RE: LARRY A. CLURE, DEC'D.**) **DOCKET NO. 45,077**
2)
3 **CLAIM NO. G-672795**) **DECISION AND ORDER**
4

5 APPEARANCES:

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7 Widow-Petitioner, Bertha A. Clure, by
8 Fredrickson, Maxey, Bell & Allison, per
9 Leo H. Fredrickson

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11 Employer, Don Spafford, J. Bar M. Ranch, by
12 Don Spafford, Owner

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14 This is an appeal filed by the surviving spouse of Larry A. Clure, Dec'd. on January 27, 1975,
15 from an order of the department of Labor and Industries dated December 6, 1974, which denied her
16 claim for widow's pension on the grounds that her deceased husband, Larry A. Clure, was not in
17 the course of his employment at the time of his death. **SUSTAINED.**
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20 **DECISION**

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22 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
23 and decision on a timely Petition for Review filed by the widow-petitioner to a Proposed Decision
24 and Order issued by a hearing examiner for this Board on November 13, 1975, in which the order of
25 the Department dated December 6, 1974, was sustained.
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27 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
28 prejudicial error was committed and said rulings are hereby affirmed.

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30 The issue in this appeal is whether or not the deceased workman, Larry A. Clure, was in the
31 course of his employment with Don Spafford, J Bar M Ranch, at the time he was killed in a one-car
32 automobile accident at about 1:20 a.m. on November 7, 1974, when he ran off the side of the road
33 on the highway between Newport and Dalkena, Washington.
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35 Mr. Clure had been employed for several months as a ranch hand and mechanic at the
36 employer's ranch near Usk, Washington, and resided on the premises. On November 5, 1974, a
37 shaft on a piece of farm equipment broke. It was necessary that a trip be made into Spokane, to
38 take the broken shaft to a farm implement dealer in that city, in order to obtain a replacement shaft
39 of the right size or to have a new shaft ordered.
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41 The employer, Mr. Spafford, mentioned to Mr. Clure, early in the morning on November 6,
42 1974, that this trip to Spokane had to be made, and he testified "it was imperative that either he [Mr.
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1 Clure] stay at the ranch or I stay at the ranch." Mr. Clure then advised the employer that he had
2 some personal business he wanted to do in Spokane, namely, to look around for a larger trailer
3 house for him and his family, and he would, therefore, take the broken shaft to the implement
4 dealer in Spokane and obtain a new shaft or order one. This was an agreeable arrangement as far
5 as the employer was concerned, since it would accomplish the business trip which was a necessity.
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9 Mr. Clure left the employer's ranch at Usk, which is about 60 miles north of Spokane by
10 normal direct highway route, at about 8:00 a.m. on November 6, 1974, driving his own Jeep vehicle.
11 He went to the implement dealer in Spokane, where the new shaft was not in stock but had to be
12 ordered, for shipment from Portland, Oregon, to Spokane. This was done, and a few days later the
13 employer picked up the new shaft from the dealer in Spokane. For the rest of the day on November
14 6, 1974, the workman presumably went about personal business in Spokane.
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18 On his return trip from Spokane to the ranch at Usk, Mr. Clure did not follow the direct 60-
19 mile route between those points. There is a highway which goes northeasterly to the town
20 Newport, and thence another road in a general northwesterly direction from Newport through
21 Dalkena, which re-joins the direct Spokane-Usk route at a point a little south of Usk. Travel by way
22 of this "loop," through Newport and Dalkena, adds 18 miles to the journey to Usk.
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25 Mr. Clure deviated onto this side-trip into Newport, where he went to a cocktail lounge and
26 dance hall and consumed some alcoholic beverages. He was seen in the cocktail lounge by his
27 employer between 10:30 p.m. and midnight, and appeared intoxicated, and the employer felt he
28 was not in shape to drive and said that he, the employer, would drive Mr. Clure home. Mr. Clure
29 responded that he was not going to drive but would sleep in his Jeep that night. However, he did
30 drive, and at 1:20 a.m. on November 7, 1974, he died when his Jeep went off the highway and
31 crashed, between Newport and Dalkena, while on the detour route before it joins the direct highway
32 route between Spokane and Usk. The parties stipulated that blood samples, taken from
33 deceased's body at the scene, revealed a blood alcohol level of .26, and a level of .10 is presumed
34 intoxication by law.
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40 Based on the foregoing facts, we are satisfied that the workman's trip by the normal route
41 from Usk to Spokane and return (except for whatever deviations he engaged in on personal matters
42 in Spokane) must be said to have been in the course of his employment. His trip into Spokane was
43 a so-called "dual-purpose" trip, about which the law is quite clear, based on the leading case of
44 Marks v. Gray, 251 N.Y. 90, 167 N.E. 181 (1920), authored by the eminent Judge Cardozo. The
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1 basic dual-purpose rule is stated in Larson's Workmen's Compensation Law, Vol. I, Sec. 18.12, as
2 follows:
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4 "...When a trip serves both business and personal purposes, it is a
5 personal trip if the trip would have been made in spite of the failure or
6 absence of the business purpose and would have been dropped in the
7 event of failure of the private purpose, though the business errand
8 remained undone; it is a business trip if a trip of this kind would have
9 been made in spite of the failure or absence of the private purpose,
10 because the service to be performed for the employer would have
11 caused the journey to be made by someone even if it had not coincided
12 with the employee's personal journey." (Emphasis supplied)
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14 Thus, the trip to Spokane and return was a business trip.

15 However, an equally well-established principle is that an identifiable deviation from a
16 business trip for personal reasons takes the employee out of the course of his employment until he
17 returns to the route of the business trip. See the extensive discussion in Larson's Workmen's
18 Compensation Law, Vol. I., Sec. 19, Deviations, beginning at pg. 4-216. Secs. 19.33 and 19.35
19 point out that the majority rule is that a side-trip for personal reasons is a deviation from
20 employment until the side-trip is completed and the employee has regained the regular business
21 route or destination. Our jurisdiction is properly cited as in accord with this principle. Gray v.
22 Department of Labor and Industries, 43 Wn. 2d 578 (1953); and Hill v. Department of Labor and
23 Industries, 173 Wash. 575 (1933).
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26 Therefore, recovery in the instant case is barred because the workman clearly deviated from
27 the business route on the return trip from Spokane, in taking the side-trip into Newport for obviously
28 personal reasons. At the time of his fatal injury at 1:20 a.m. on November 7, 1974, on the road
29 between Newport and Dalkena, he was still on this personal side-trip, had not again reached the
30 regular Spokane-Usk route, and thus was not in the course of employment.
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32 RCW 51.08.013, insofar as here pertinent, defines the term "acting in the course of
33 employment" as meaning "the workman acting at his employer's direction or in the furtherance of
34 his employer's business..." This of course is but a restatement of prior judicial decisions defining
35 "course of employment," for example, Lunz v. Department of Labor and Industries, 50 Wn. 2d 273
36 (1957), stating:
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38 "The test adopted by this court for determining whether an employee is,
39 at a given time, in the course of his employment, is whether the
40 employee was, at the time, engaged in the performance of the duties
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1 required of him by his contract of employment, or by specific direction of
2 his employer; or, as sometimes stated, whether he was engaged at the
3 time in furtherance of the employer's interest Cugini v. Department of
4 Labor & Industries, 31 Wn. (2d) 852, 199 P. (2d) 593; D'Amico v.
5 Conquista, 24 Wn. (2d) 674, 167 P. (2d) 157; Young v. Department of
6 Labor & Industries, 200 Wash. 138, 93 P. (2d) 337, 123 A.L.R. 1171."
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8 Clearly, at the time of his death, this workman was not engaged in performance of duties required
9 by his employment or by specific direction of his employer, nor was he engaged at the time in
10 furtherance of his employer's interests or doing anything incidental thereto. He was simply on a
11 deviation, an excursion or "frolic" of his own, for personal reasons only. See Gray v. Department of
12 Labor and Industries, supra.
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15 Petitioner's petition for Review has cited two cases, Leary v. Department of Labor and
16 Industries, 18 Wn. 2d 532 (1943), and Hilding v. Department of Labor and Industries, 162 Wash.
17 168 (1931), as allegedly supporting allowance of this claim.
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20 In Leary, a gatekeeper at a shipyard, part of whose duties was to see that the entrance to
21 the gate was kept clear and unobstructed at all times, left the gate and went to get his own
22 automobile which was parked nearby, to assist in pushing a fellow-employee's car, which was
23 stalled in front of the gate and obstructing the entrance thereto, out of the way. During this activity,
24 his alleged injury occurred. While part of the motivation for this act was to assist the fellow
25 employee in getting his car started, the court held that the workman was also clearly acting within
26 the scope of his gate keeping duties and in furtherance of his employer's interest, and was thus in
27 the course of his employment at that time.
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30 In Hilding, a clear business trip was involved, namely, a round trip by a lumber grader and
31 mill foreman, from his regular site of employment at a lumber mill in Asotin, to Spokane and return,
32 in order to regrade a quantity of lumber which his employer had shipped to Spokane. The usual
33 and normal route between the two cities crosses into Idaho and extends for about ten miles in that
34 state. While on the return trip on this direct route, after completing the task in Spokane, the
35 workman's car ran off the highway because of a heavy fog, on the portion of the highway which was
36 in Idaho, and he was fatally injured. There was no question in Hilding but that the workman was at
37 the time acting at the specific direction of his employer and in furtherance of his employer's
38 business, and hence was in the course of his employment. There was no deviation whatsoever, for
39 personal or other reasons, and that was not even in issue in the case. The sole legal question
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1 presented was whether the Washington Act could have extraterritorial operation to cover this
2 employment injury which occurred within the geographical borders of Idaho; and our Court held that
3 our Act did have the necessary extraterritorial effect to properly cover the claim.
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5 We have no quarrel with the holdings of the Leary and Hilding cases. However, they are
6 simply not in point, in light of the different facts here, which make the controlling issue the
7 workman's deviation from employment for solely personal reasons.
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10 **FINDINGS OF FACT**

11 After a careful review of the record, the Board finds as follows:

- 12 1. On December 2, 1974, the widow-petitioner, Bertha A. Clure, filed a
13 petition for a widow's pension with the Department of Labor and
14 Industries, alleging that her deceased husband, Larry A. Clure, died on
15 November 7, 1974, while in the course of his employment with Don
16 Spafford, J Bar M Ranch. On December 6, 1974, the Department
17 entered an order rejecting the claim for the reason that at the time of the
18 workman's death he was not in the course of his employment. On
19 January 27, 1975, the widow-petitioner appealed to this Board, and on
20 February 6, 1975, the Board granted the appeal.
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- 22 2. For some period of time prior to November 6, 1974, the deceased
23 workman, Larry A. Clure, was employed by Don Spafford, J Bar M
24 Ranch, near Usk, Washington, as a ranch hand and mechanic, and he
25 resided on the employer's premises.
26
- 27 3. On November 5, 1974, a shaft on a piece of machinery at the ranch
28 broke, and it was therefore necessary that a trip be made into Spokane,
29 Washington, to take the broken shaft to a farm implement dealer, in
30 order to obtain a replacement shaft of the right size or to have a new
31 shaft ordered.
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- 33 4. Usk is about 60 miles north of Spokane, by the normal and direct route
34 for travel between those two towns. There is a highway which leaves
35 the direct Spokane-Usk route, and goes northeasterly to the town of
36 Newport, and another road leads from Newport through the town of
37 Dalkena in a general northwesterly direction, re-joining the direct
38 Spokane-Usk route at a point a little south of Usk. Travel by way of this
39 "loop," through Newport and Dalkena, adds approximately 18 miles to
40 the journey.
41
- 42 5. On the morning of November 6, 1974, at about 8:00 a.m., the workman
43 left the ranch at Usk, by agreement with his employer, drove to
44 Spokane, took the broken shaft to the farm implement dealer and
45 ordered a new shaft for his employer, and conducted other personal
46 business. Upon his return trip toward Usk from Spokane on November
47 7, 1974, the workman deviated and took the side-trip route into Newport,

1 where he visited a cocktail lounge and consumed alcoholic beverages in
2 the evening of November 6, 1974.

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4 6. At 1:20 a.m. on November 7, 1974, the workman died when his vehicle
5 went off the highway and crashed, between Newport and Dalkena, while
6 still on the detour route before it joins the normal and direct route from
7 Spokane to Usk. At that time his blood alcohol level was .26.
- 8 7. At the time of the fatal injury, the workman was engaged in a deviation
9 from his employment and was on a personal excursion or frolic of his
10 own, and he was not acting at his employer's direction, nor was he
11 engaged at the time in furtherance of his employer's interests or doing
12 anything incidental thereto.

13 **CONCLUSIONS OF LAW**

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

- 16 1. This Board has jurisdiction of the parties and the subject matter of this
17 appeal.
- 18 2. The deceased workman, Larry A. Clure, was not in the course of his
19 employment with Don Spafford, J Bar M Ranch, at the time he was killed
20 at 1:20 a.m. on November 7, 1974.
- 21 3. The order of the Department of Labor and Industries entered herein on
22 December 6, 1974, rejecting this petitioner's claim, is correct, and
23 should be sustained.
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26 It is so ORDERED.

27 Dated this 21st day of June, 1976.

28
29 BOARD OF INDUSTRIAL INSURANCE APPEALS

30
31
32 /s/
33 PHILLIP T. BORK Chairman

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36 /s/
37 R. M. GILMORE Member
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