

Bechner, Laura

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

"On call" employees

A ski instructor injured during a "free" skiing period was in the course of employment since the injury occurred during the hours of the ski school's operation, the employer encouraged skiing to familiarize the worker with the course, and the employer required the worker to be "on call" to give ski lessons.*In re Laura Bechner, BIIA Dec., 45,777 (1976)*

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

1 **IN RE: LAURA M. BECHNER**) **DOCKET NO. 45,777**
2)
3 **CLAIM NO. G-712000**) **DECISION AND ORDER**
4 _____

5 **APPEARANCES:**

6 Claimant, Laura M. Bechner, by
7 Lasher & Sweet, per
8 Earl Lasher & Chris Stamos
9

10 Employer, Stevens Pass, Inc., by
11 Graham, Cohen & Wampold, per
12 Norman Cohen
13

14 Department of Labor and Industries, by
15 The Attorney General, per
16 Thomas O'Malley, Assistant
17

18 This is an appeal filed by the employer, Stevens Pass, Inc., on July 11, 1975, from an order
19 of the Department of Labor and Industries dated May 26, 1975, which adhered to its prior order
20 dated April 15, 1975, allowing the claim. **SUSTAINED.**
21

22 **DECISION**

23 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
24 and decision on a timely Petition for Review filed by the employer to a Proposed Decision and
25 Order issued by a hearing examiner for this Board on November 3, 1976, in which the order of the
26 Department dated May 26, 1975 was sustained.
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28 The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no
29 prejudicial error was committed and said rulings are hereby affirmed.
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31 The basic issue, upon which this appeal was tried, is whether or not the claimant was in the
32 course of her employment for Stevens Pass, Inc., at the time she sustained an injury while skiing on
33 March 8, 1975. The pertinent facts are quite well set forth in our hearing examiner's Proposed
34 Decision and Order, and we are in agreement with his proposed disposition of this appeal, namely,
35 to sustain the Department's allowance of the claim.
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37 The employer raises two arguments in its Petition for Review:
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39 (1) There is no medical evidence of an injury to the claimant; and
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41 (2) The claimant was not in the course of her employment, if it is assumed there was an
42 injury.
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1 From our review of the record, we find the first argument an indulgence in sophistry. During
2 the hearing proceedings before our hearing examiner, there was obviously no doubt in anyone's
3 mind that the claimant sustained an "injury" within the meaning of the Act, i. e., a traumatic
4 happening or incident, and a physical condition resulting therefrom, on March 8, 1975; and the only
5 real issue joined was whether at the time of such injury the claimant was in the course of her
6 employment as a ski-school instructor.
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10 The employer was clearly well aware that the claimant had been injured on a ski slope, and
11 there is significant testimony from the employer's own witnesses admitting to that fact. On direct-
12 examination, Robert G. Vincent, manager of the ski shop at Stevens Pass, testified as follows:
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14 "Q Was she a full-time employee in the lodge when she hurt herself?

15 A Yes."

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18 On direct-examination of Richard Sola, director of the ski school at Stevens Pass, the following was
19 elicited:
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21 "Q Directing your attention to March 8th of 1975, do you remember any
22 particular day that Laura Bechner got hurt? Do you remember the day
23 she got hurt?

24 A Yes."

25
26 On cross-examination of Mr. Sola, the following question was asked and answered, without
27 objection:
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29 "Q Are you aware that Laura Bechner was injured or hurt, or had an
30 incident which required medical attention at Stevens Pass on March 8,
31 1795?

32 A Yes." (Emphasis supplied)

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35 This latter testimony, particularly, and prior and subsequent comments thereon by employer's
36 counsel in colloquy with our hearing examiner, satisfies us that the employer had effectively
37 conceded That claimant sustained an injury on March 8, 1975, and the only matter disputed was
38 the "course of employment" issue.
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41 Turning, then, to the employer's argument that the claimant was not in the course of her
42 employment when she was injured, we disagree therewith. No assertion was made nor evidence
43 submitted that there was any misconduct on the claimant's part which would operate to take her out
44 of the course of her employment. Not only was she skiing with the employer's knowledge and
45 acquiescence, but such so-called "free" skiing was encouraged by the ski-school director in order
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1 that she, as well as the other part-time ski instructors, could gain greater familiarity with the ski runs
2 and improved skiing skills.
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4 The evidence is undisputed that the claimant was injured on the premises of the employer
5 during the hours the ski school operations were open. The evidence fairly establishes that she had
6 attended the ski school clinic until approximately 10:00 or 10:15 a. m., then was on a "rotating" duty
7 in the ski-school office from 10:30 to 11:00 a. m., and was to have taught a class of "tiny-tots" at
8 1:30 p. m. Further testimony was that, as a part-time instructor, one of her duties was to be present
9 at the ski slope and "on call" in the event that someone came in to take ski lessons. Since she was
10 only paid on a commission basis, her availability would benefit the employer financially. The
11 claimant's presence on the ski slope clad in a distinctive jacket and wearing the badge of a ski
12 instructor was clearly of benefit to the employer's business by advertising the availability of ski
13 lessons.
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15 The claimant's skiing was closely associated with the employer's business of selling ski lift
16 tickets and ski instruction. It is not unreasonable to conclude in this particular case, as pointed out
17 by our hearing examiner, that the claimant's taking advantage of the privileges to enjoy herself was
18 also still in furtherance of her employer's interests as a legal matter. We conclude that "free" skiing
19 by this part-time instructor at the time and place she was doing so when injured, was an accepted
20 and normal regular incident and condition of her ski-instructing employment. She was "in the
21 course of employment" within the meaning of that phrase under our Act. See RCW 51.08.013.
22 See, also, Larson on Workmen's Compensation Law, Vol. 1, Secs. 20.00, 22.00, 22.12, and 22.21.
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24 After consideration of the Proposed Decision and Order and the Petition for Review filed
25 thereto, and a careful review of the entire record before us, we are persuaded that the Proposed
26 Decision and Order is supported by the preponderance of the evidence and is correct as a matter of
27 law.
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29 The hearing examiner's proposed findings, conclusions and order are hereby adopted as this
30 Board's findings, conclusions and order and are incorporated herein by this reference.
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32 It is so ORDERED.

33 Dated this 29th day of December, 1976.

34 BOARD OF INDUSTRIAL INSURANCE APPEALS

35 /s/ _____
36 PHILLIP T. BORK Chairman

37 /s/ _____
38 SAM KINVILLE Member
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