Vanderhoogt, Arie "Art"

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

Personal comfort doctrine

A truck driver who remained on the employer's premises after hours to install a CB radio antenna for his personal use was not in the course of employment when he sustained an injury. The personal comfort doctrine was held inapplicable. ***….In re Arie "Art" Vanderhoogt,* BIIA Dec., 48,219 (**1977**)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ARIE "ART" VANDERHOOGT	**)**	**DOCKET NO. 48,219**
	)	
CLAIM NO. C-844434	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Arie "Art" Vanderhoogt, by
Campbell, Johnston and Roach, per
Patrick T. Roach and Mike R. Johnston

Employer, Lee and Eastes Tank Lines, by
Washington Motor Carriers Safety Council, per
Larry Pursley and Walter R. Turner

Department of Labor and Industries, by
The Attorney General, per
Richard Roth and Thomas B. Maloney, Assistants

This is an appeal filed by the claimant on May 14, 1976, from an order of the Department of Labor and Industries dated March 31, 1976, which rejected the claim for the reason that "at the time of injury the claimant was not in the course of employment." **SUSTAINED**.

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 Petition for Review filed by the Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on August 4, 1977, in which the order of the Department dated March 31, 1976 was reversed, and the matter remanded to the Department with directions to allow the claim for the claimant's right knee condition arising out of an injury of January 28, 1976.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The claimant was employed as a truck driver for Lee and Eastes Tank Lines. For his own pleasure and enjoyment, he had installed a personally-owned CB radio in the employer's truck. After his truck driving work had been completed and while still on the employer's premises, at about 2:30 a.m. on January 28, 1976, the claimant sustained an injury to his right knee when he fell from a ladder while installing an antenna to be used with his CB radio. While the employer knowingly permitted the installation of this equipment, it was of no value to the employer in the operation of his

business. No base station was maintained by which the individual truck drivers could have been contacted, nor was an effort made by the employer to dispatch trucks by use of radio.

From our review of the record, we are unable to reach a conclusion that the claimant was injured during the course of his employment. The possession and use of the CB radio had no reasonable connection to the operation of the employer's business, and no evidence was introduced which would show the employer received any benefit from its use. Clearly, the use of the CB radio was for the personal enjoyment of the claimant, and its operation was never contemplated by the employer as a part of the claimant's duties.

The hearing examiner decided that even if there was no reasonable connection with the employer's business or even if the employer received no benefit from the installation of the CB radio, at least the claimant would be covered under the "personal comfort" doctrine, and in support thereof, the case of Tilly v. Department of Labor and Industries, 52 Wn. 2d 148 (1958), was cited. We do not agree. To cover the claimant here under the personal comfort doctrine would require, in our opinion, an extension and distortion of the concept. Personal comfort indicates that one is seeking a relief from discomfort. There is no showing or claim made that the use of the CB radio would in any way relieve the claimant from any discomfort caused by his employment. Tilly v. Department, supra, does not define the personal comfort doctrine, but does stand for the proposition that a workman on his employer's premises and within the time limits of his employment, is still within the course of employment while engaging in an act ministering to his personal comfort, such as going to and from toilet facilities. We have no quarrel with the result of the Tilly case. Further, we recognize the applicability of the personal comfort doctrine to a variety of employment situations, as extensively set forth in Larson, Workmen's Compensation Law, Vol. 1, Secs. 21.10 through 21.80. However, we are unable to place the use of a personally owned and personally desired CB radio into any of those categories. And of course the claimant was clearly outside the time limits of his work hours at the time he fell while installing his radio antenna.

The claimant's activity at the time of his injury was not in any way at his employer's direction, or in furtherance of his employer's business or doing anything incidental thereto. See Lunz v. Department of Labor and Industries, 50 Wn. 2d 273 (1957), and RCW 51.08.013.

FINDINGS OF FACT

After a careful review of the entire record, the Board finds:

1. On February 4, 1976, the claimant, Arie Vanderhoogt, filed a report of accident with the Department of Labor and Industries, alleging that on January 28, 1976, he sustained an industrial injury while in the course of his employment with Lee and Eastes Tank Lines. On February 18, 1976, a time-loss compensation order was issued by the Department. The employer filed a protest on February 23, 1976, and on March 2, 1976, the Department held its order of February 18, 1976, in abeyance pending further investigation. On March 31, 1976, the Department entered an order setting aside its order of February 18, 1976, and rejecting the claim for the reason that at the time of the injury the claimant was not in the course of his employment. The claimant appealed on May 14, 1976, and on June 4, 1976, the Board granted the appeal, and hearings were held thereon.

2. On January 28, 1976, at approximately 2:30 a.m., the claimant was installing his personally-owned citizen's band radio antenna on a tank truck owned by the employer. This antenna was to be used with the claimant's personally-owned citizen's band radio which he had previously installed in the tank truck.

3. The truck was situated on the employer's premises. However, the claimant's activity with the antenna was after working hours and solely upon his own initiative.

4. While installing the antenna, the claimant fell from a ladder and injured his right kneecap.

5. The employer made no use of, nor derived any benefit from; the citizen's band radio and antenna; and claimant's installation thereof in the truck was not at his employer's direction, or in furtherance of his employer's business, or incidental to any furtherance of the employer's interest.

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. On or about January 28, 1976, at the time of the injury to his right knee, the claimant was not in the course of his employment within the meaning of the Workmen's Compensation Act.

3. The order of the Department of Labor and Industries dated March 31, 1976, rejecting this claim, is correct and should be sustained.

It is so ORDERED.

Dated this 22nd day of December, 1977.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
PHILLIP T. BORK Chairman

/s/_____
WILLIAM C. JACOBS Member