

Attwell, Larry

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

Goodwill

A shopping center security guard, injured while returning from investigating a car accident which had occurred on a public thoroughfare, was in the course of employment because he was furthering his employer's interests by fostering the general public's goodwill toward his employer. ...*In re Larry Attwell*, BIA Dec., 53,756 (1981)
[dissent]

Scroll down for order.

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

1 **IN RE: LARRY ATTWELL**) **DOCKET NO. 53,756**
2)
3 **CLAIM NO. H-278463**) **DECISION AND ORDER**
4 _____

5 **APPEARANCES:**

6 Claimant, Larry Attwell, by
7 Jackson, Ulvestad, Goodwin & Grutz, per
8 Brian Scott
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10 Employer, American Commercial Security Services, Inc.,
11 None
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13 Department of Labor and Industries, by
14 The Attorney General, per
15 Dinah C. Pomeroy, Kirk I. Mortensen, and Ronald R. Ward, Assistants
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17 This is an appeal filed by the claimant on February 9, 1979, from an order of the Department
18 of Labor and Industries dated October 20, 1978, which ordered that the claim remain closed after a
19 request for reconsideration on the grounds as set forth in a prior order that at the time of the injury
20 the claimant was not in the course of his employment. **REVERSED AND REMANDED.**
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22) **DECISION**
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24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
25 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
26 issued by a hearings examiner for this Board on January 23, 1981, in which the order of the
27 Department dated October 20, 1978 was sustained.
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29 The Board has reviewed the evidentiary rulings of the hearings examiner and finds that no
30 prejudicial error was committed and said rulings are hereby affirmed.
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32 The issues raised by this appeal concern (1) whether the appeal was filed in a timely manner
33 to this Board from the order of October 20, 1978, issued by the Department of Labor and Industries,
34 and (2) whether the claimant at the time of injury was acting in the course of his employment within
35 the purview of the Workers' Compensation Act.
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37 As to the first issue, we believe the Proposed Decision and Order adequately substantiates
38 that the appeal was timely filed and that the Board does have jurisdiction over the parties and
39 subject matter of the appeal. In order to resolve the issue concerning the merits of Mr. Attwell's
40 claim, a summary of the salient facts surrounding his injury is required.
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1 Larry Attwell was employed as a security guard at the Lake Forest Park Shopping Center in
2 Bothell, Washington. He was an employee of American Commercial Security Services in that
3 capacity and was not an employee of the shopping center itself. On the evening of December 22,
4 1977 during his regular working hours, an automobile accident occurred at an intersection of public
5 thoroughfares adjacent to the shopping center. Although there is some dispute by what impetus
6 Mr. Attwell initially acted, it is clear that upon being apprised of the accident he entered his private
7 vehicle, drove out of the shopping center and went to the site of the accident on the public highway.
8 He proceeded to park his car, advance to the scene of the accident, found that it was being
9 attended by the Washington State Patrol, and determined to return to his regular duties at the
10 shopping center. However, upon recrossing the highway to return to his own automobile, he was
11 struck and suffered severe injury.
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13 Exhibit No 1 lists specific patrol duties which the claimant and other security guards were
14 obliged to follow. In addition, the record supports that security guards working for ACSS were to
15 basically keep the tenants at the shopping center "happy". The legal question presented by this
16 appeal concerns whether the claimant's actions which took him off the premises of the shopping
17 center to the location of a perceived emergency and possible rescue adjacent to the shopping
18 center were duties which would leave him within his course of employment and thereby within the
19 umbrella of coverage under the Workers' Compensation Act.
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21 The Proposed Decision and Order discusses case law pertaining to actions of volunteers, the
22 last of such cases being decided nearly 30 years ago. Although a creditable job of discussing the
23 case law is contained in the Proposed Decision and Order, such discussion does not truly center on
24 the questions which the facts raise concerning the statutory law in effect at the time of Mr. Attwell's
25 injuries.
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27 In 1961, the legislature enacted provisions relating to the entitlement of injured workers to the
28 benefits of the Act. Specifically, language was adopted and codified in RCW 51.32.015 and
29 51.36.040 which states in pertinent part:
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31 "The benefits of Title 51 RCW shall be provided to each worker receiving
32 an injury, as defined therein, during the course of his or her
33 employment...while on the jobsite. The jobsite shall consist of the
34 premises as are occupied, used or contracted for by the employer for
35 the business or work process in which the employer is then engaged."
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1 By the same legislative act, the term "acting in the course of employment" was defined and later
2 codified as RCW 51.08.013:
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4 "Acting in the course of employment' means the worker acting at his or
5 her employer's direction or in the furtherance of his or her employer's
6 business... and it is not necessary that at the time an injury is sustained
7 by a worker he or she be doing the work on which his or her
8 compensation is based or that the event be within the time limits on
9 which industrial insurance or medical aid premiums or assessments are
10 paid..."
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12 The Proposed Decision and Order did not concern itself at all with this definition or with the
13 provisions of RCW 51.32.015 and 51.36.040 allowing coverage for all injuries occurring during the
14 course of employment.
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16 Before proceeding further, it is necessary to distinguish those cases upon which the
17 proposed decision was founded. In Degrugillier v. Department of Labor and Industries, 166 Wash.
18 579 (1932), it must be recognized as the court noted in its opinion that, the case itself was not tried
19 on a course of employment theory but under a doctrine which permitted coverage for employees
20 acting under emergency situations. The case occurred long prior to the enactment of the current
21 statutory provisions and the court's distinguishing the claimant as a non-covered volunteer might
22 well receive different treatment under a test of whether the injured worker was acting in furtherance
23 of the employer's interests, a test now committed to statute in RCW 51.08.013.
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25 In Cugini v. Department of Labor and Industries, 31 Wn. 2d 852 (1948), the court's decision
26 was founded upon prior case law, D'Amico v. Conguista, 24 Wn. 2d 674 (1946), which had set
27 forth definite conditions which must exist in order to qualify one for the benefits of the Act. One of
28 the tenets of that prior case law required that an employee must be in the actual performance of
29 the duties required by the contract of employment and that the work being done must be such as to
30 require payment of industrial insurance premiums or assessments. Clearly as of 1961, these two
31 fundamental requirements were statutorily abrogated by the adoption of the definition of "acting in
32 the course of employment". Thereafter, the rule of law expressed in D'Amico became of
33 questionable authority. Similarly those cases such as Cugini which relied upon the rule in D'Amico
34 are no longer authoritative. In addition, the facts in Cugini are significantly different in that there
35 was some evidence that Cugini was working for his own gain rather than in furtherance of his
36 employer's interests at the time of injury. The proof was unclear and tended more to establish the
37 claimant was again a volunteer not at that time covered by statute.
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1 The case of Muck v. Snohomish Co. P.U.D., 41 Wn. 2d 81 (1952) involved an action in
2 negligence by the administratrix of the estate of the deceased, Mr. Muck, who had been
3 electrocuted while assisting in the placing of a television antenna. The decision concerns itself with
4 workers' compensation principles because the defendant in the negligence action was seeking to
5 extract itself from liability by virtue of the fact that the claimant should have fallen under the
6 Workers' Compensation Act and thereby provide his widow and minor child with no remedy except
7 to avail themselves of their rights under that Act. To us, Muck provides no strong authority
8 inasmuch as the court's holding was based on the propriety of the jury verdict which found in
9 essence that muck was not engaged in covered extra-hazardous employment and was not
10 engaged in duties required of him either by his contract of employment or by specific direction of his
11 employer. In reading the opinion, one is strongly impressed that had the jury found otherwise, the
12 court would have acceded to that factual determination as well.

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19 Consequently in reviewing the Degrugillier, Cugini and Muck cases, we do not find that they
20 provide controlling authority over the ultimate issue presented by this appeal now before us. We
21 believe the facts presented must be viewed in terms of the statutory coverage and definitions
22 incorporated therein to determine Mr. Attwell's rights to benefits. Surely an argument can be
23 forwarded that little benefit is gained by the merchants at lake Forest Park Shopping Center who
24 were being served by the American Commercial Security Services Company by Mr. Attwell's
25 charitable act. However, there is a growing recognition that acts by employees which benefit total
26 strangers inure to the good will of the company by whom the worker was employed. As
27 pronounced by Professor Larson in his treatise on the Law of Workmen's Compensation, Section
28 27.22(b) (1979 Edition), this good will finds ultimate expression "when it reaches out to embrace
29 acts of gallantry directed unselfishly toward the public in general". Following this theory, workers in
30 New York, New Jersey, Texas, Illinois, California and Louisiana have been granted benefits.

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37 Also, it has long been recognized that acts occurring as an emergency or requiring rescue
38 activity is within the course of employment if the employer has an interest in the rescue. See
39 Larson, The Law of Workmen's Compensation, Section 28.00. Using this rationale, the Supreme
40 Court of the United States extended this rescue doctrine to cover the rescue of complete strangers
41 when the connection with employment is furnished simply by the fact that the employment brought
42 the employee to the place where he observed the occasion for the rescue attempt. Larson, Section
43 28.23, O'Leary v. Brown-Pacific-Maxon, Inc., 340 U.S. 540 71 S.Ct. 470, 95 L.Ed. 483 (1951). The
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1 court's ultimate reasoning found that a zone of special danger was created by the conditions of
2 employment out of which the injury arose, and that a reasonable rescue was one of the risks of the
3 employment incidental to it and was to be covered by statute. The court specifically commented
4 that it was not necessary that at the time of injury the employee be engaged in activity of benefit to
5 his employer.
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9 We would have much difficulty making the same statement under our statutory scheme given
10 the language of RCW 51.08.013. However, we do agree that the public thoroughfare boundaries
11 surrounding the Lake Forest Park Shopping Center while probably not a part of the jobsite itself
12 would be included within the arena of permissible course of employment travel for security guards
13 working on the jobsite especially when one considers the reasoning underlying the "rescue" and
14 "emergency" doctrines.
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18 We think it a factual and not legal question which is raised by this appeal, whether the
19 claimant's travel from the work premises to the adjacent accident site would result in a deviation
20 from his employment or whether such would be included within the purview of furthering the
21 employer's interests by fostering good will for the security company and the shopping center itself.
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24 In looking at the record before us as a whole, we choose to find that the claimant's actions
25 did further the interests of his employer and the clients served by his employer, and, therefore, we
26 find the claimant is entitled to the benefits of the Workers' Compensation Act of this state.
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28 **FINDINGS OF FACT**

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- 30 1. On February 14, 1978, a report of accident was received from the
31 claimant alleging the occurrence of an industrial injury during the course
32 of his employment with American Commercial Security Services, Inc.,
33 on December 22, 1977. Following interlocutory action, the Department
34 issued an order on October 20, 1978, adhering to the provisions of
35 earlier orders rejecting the claim for the reason that the injury did not
36 occur during the course of employment. That order was not
37 communicated to the claimant until November 6, 1978. On December
38 27, 1978, a notice of appeal was filed from the order of October 20,
39 1978, with the Department of Labor and Industries. Subsequently after
40 learning of the appeal being filed with the Department, the Board of
41 Industrial Insurance Appeals issued an order on March 1, 1979, granting
42 the appeal and directing that proceedings be held on the issues raised
43 by the appeal.
 - 44 2. On December 22, 1977, the claimant, Larry Attwell, was employed by
45 American Commercial Security Services as a security guard at the Lake
46 Forest Park Shopping Center near Bothell, Washington.
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3. The claimant's injuries occurred on December 22, 1977, following his response to the scene of an accident occurring at the intersection of 165th Street and Bothell Way, an intersection directly adjacent to the Lake Forest Park Shopping Center where he had been tending to other duties in his capacity as a security guard. Upon his arrival at the scene of the accident, he found that such was being attended by a member of the Washington State Patrol and determined that he should return to the work site premises. Upon crossing the street to return to his private vehicle which he had driven the short distance from the shopping center to the accident vicinity, he was struck by a car driven by a member of the general public and suffered severe bodily injuries.
 4. Specific duties assigned to security guards by the employer neither included nor excluded references to responses to emergency situations or rescues off the immediate street-bounded premises of the Lake Forest Park Shopping Center, but did include the general admonition that security guards should do everything to keep the merchants at Lake Forest Park Shopping Center happy.
 5. When the claimant responded to the scene of the accident adjacent to the jobsite premises at the Lake Forest Park Shopping Center, he was acting in furtherance of his employer's interests.

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CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter to this appeal.
2. At the time of his injury on December 22, 1977, the claimant was acting within the course of his employment as that term is contemplated under the Workers' Compensation Act of this state.
3. The order of the Department of Labor and Industries dated October 20, 1978, effectively rejecting the claimant's application for benefits is incorrect, should be reversed, and this claim remanded to the Department of Labor and Industries with direction to accept the claim and to accord the claimant all benefits to which he is rightfully entitled.

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It is so ORDERED.

Dated this 24th day of April, 1981.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ _____
MICHAEL L. HALL Chairman

/s/ _____
FRANK E. FENNERTY, JR. Member

DISSENTING OPINION

I do not visualize claimant's act as one "inuring to the benefit of", or in the "interest of," or for the "good will of" the employer. Nor do I believe that the legislative intent was to put action such as that taken by the claimant within the purview of the Workers' Compensation Act. The majority's rationale opens such a vast range of possibilities that it could force a negative legislative reaction to the whole compensation scheme.

Dated this 24th day of April, 1981.

/s/ _____
AUGUST P. MARDESICH Member

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