

Wooding, Richard

COVERAGE AND EXCLUSIONS

Elective adoption

An officer and shareholder of a corporation is covered under the elective adoption provisions of RCW 51.12.110 where, when the corporation was first formed, he was not a shareholder and was therefore subject to the mandatory coverage provisions of the Act, and the corporation continued to report his hours and remit the required premiums after he became a shareholder. Under these circumstances no formal notice of elective adoption was required under RCW 51.12.110. ...*In re Richard Wooding, BIIA Dec., 67,593 (1985)*

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

1 **IN RE: RICHARD A. WOODING**) **DOCKET NO. 67,593**
2)
3 **CLAIM NO. J-373942**) **DECISION AND ORDER**
4 _____)

5 APPEARANCES:

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7 Claimant, Richard A. Wooding,
8 by Boettcher, LaLonde, Kleweno, Witteman and Schreiber,
9 per Jeffery M. Witteman

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11 Employer, Technical Castings, Incorporated,
12 by Lewis Jurgens, President

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14 Department of Labor and Industries,
15 by The Attorney General, per
16 H. Andrew Saller, Assistant
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18 This is an appeal filed by the claimant on April 27, 1984 from an order of the Department of
19 Labor and Industries dated April 18, 1984. The order adhered to the provisions of a Department
20 order dated February 16, 1984, rejecting the claimant's application for benefits under the Industrial
21 Insurance Act, on grounds the claimant was an executive officer, shareholder, and director of the
22 employer, Technical Castings, Inc., and the employer had not made provisions for coverage by
23 elective adoption. The Department order is **REVERSED** and the claim is **REMANDED**.
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27 **PROCEDURAL STATUS AND EVIDENTIARY RULINGS**

28 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
29 and decision on a timely Petition for Review filed by the claimant to a Proposed Decision and Order
30 issued on September 24, 1984 in which the order of the Department dated April 18, 1984 was
31 affirmed.
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34 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
35 no prejudicial error was committed. Said rulings are hereby affirmed.
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38 **THE FACTS**

39 The employer corporation was formed in July, 1982, and Richard A. Wooding was one of the
40 original officers (Vice-President) and directors. Despite this status, Mr. Wooding was paid a regular
41 wage, did not have an office of his own, and performed no "executive functions". He was
42 considered by the company to be a foundry employee and a mandatorily covered worker. Mr.
43 Wooding's hours were included in the computation of worker hours supplied to the Department for
44 purposes of industrial insurance premium calculation and payment. In November 1983, he also
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1 became a shareholder of the corporation. The company continued to include Mr. Wooding's hours
2 in its quarterly report to the Department of Labor and Industries, but did not additionally file, on any
3 specially designated form, its intent to electively adopt coverage for Mr. Wooding. On January 24,
4 1984, during the course of his employment, claimant Wooding was injured. A claim for benefits
5 was filed with the Department, which by final order of April 18, 1984 rejected the claim--allegedly no
6 elective coverage having been made.
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10 APPLICATION OF THE LAW

11 Although other subsections of RCW 51.12.020 have been subject to extensive amendment
12 in the last few years, from the date of incorporation of Technical Castings, Inc. through the date of
13 claimant Wooding's on-the-job injury, subsection (9) of that statute has read:
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16 "The following are the only employments which shall not be included
17 within the mandatory coverage of this title: ...
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19 (9) Any executive officer elected and empowered in accordance with the
20 articles of incorporation or by-laws of a corporation who at all times
21 during the period involved is also a director and shareholder of the
22 corporation....However, any corporation may elect to cover such officers
23 who are in fact employees of the corporation in the manner provided by
24 RCW 51.12.110." (Emphasis supplied)
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26 In a decision of this Board In re James F. Cunningham, Docket No. 62,725, Decision of August 12,
27 1983, a similar issue was presented with respect to whether elective adoption coverage had been
28 validly made for agricultural workers, excluded from mandatory coverage under subsection (6) of
29 RCW 51.12.020.¹ We held there that the employer's intent to electively cover all employees, even
30 those otherwise excluded from mandatory coverage, coupled with payment of full premiums on
31 such employees accompanying written quarterly reports, together with the Department's
32 acceptance of those premium payments, amounted to a "writing" sufficient for elective adoption
33 under RCW 51.12.110 as it then provided.
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38 In the Cunningham appeal, all events transpired prior to January 1, 1983. In the Wooding
39 appeal now before us, that date sparks alertness toward two events which occurred subsequent
40 thereto, i.e., Mr. Wooding's achieving shareholder's status, and the date of his injury. The
41 significance of January 1, 1983 springs from the fact that as of that date an amendment (Laws of
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45 ¹ Subsequent to that decision the Supreme Court in Macias v. Department of Labor and Industries, 100 Wn.2d 263
46 (1983), declared unconstitutional RCW 51.12.020(6). Still, our reasoning in the Cunningham decision relating to employer
47 acts necessary to effect elective adoption are appropriate for reference in our analysis here.

1 1982, chapter 63, § 17) to RCW 51.12.110 became effective, relating to the manner of providing
2 notice for elective adoption coverage. That section as amended now reads in material part:
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4 "Any employer who has in his or her employment any person or persons
5 excluded from mandatory coverage pursuant to RCW 51.12.020(1), (2),
6 (3), (4), (6), (7), (8), or (9) may file notice in writing with the director, on
7 such forms as the department may provide, of his or her election to
8 make such persons otherwise excluded subject to this title. The
9 employer shall forthwith display in a conspicuous manner about his or
10 her work, and in a sufficient number of places to reasonably inform his
11 or her workers of the fact, printed notices furnished by the department
12 stating that he or she has so elected. Said election shall become
13 effective upon the filing of said notice in writing ...". (Underlining added)
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15 Clearly, prior to November 1983 Mr. Wooding did not meet the test of a person excluded from
16 mandatory coverage under the Act. Although he was an officer and director of the corporation
17 since its inception in 1982, Mr. Wooding did not become also a shareholder until more than a year
18 later. Since RCW 51.12.020(9) describes executive officers not falling within the Act's mandatory
19 coverage as those who are in addition both directors and shareholders, Mr. Wooding did not fall
20 within that description prior to November 1983. Until that time, he was in fact mandatorily covered.
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24 When the corporation then determined to recognize Mr. Wooding for his participation and
25 encourage his continued commitment to a growing business by giving him shares of stock, it in no
26 way was attempting to change his status as a covered employee. For that reason the company did
27 not change its already established practice of reporting his hours and paying premiums thereon.
28 Neither did the Department, obviously, stop accepting the premiums the company paid on his
29 hours. Neither did the Department, obviously, stop accepting the premiums the company paid on his
30 hours.
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33 Subsection (9) of RCW 51.12.020 was enacted in 1979 (Laws of 1979, chapter 128, sec. 1)
34 to make clear that overhead costs of small corporations would be automatically shielded from the
35 mandatory burdens of workers' compensation premiums on their corporate executive officers. The
36 class created by that section applies to all corporations, large and small alike, but the financial
37 impact of officers' premiums on the costs of large corporations is slight compared to that of
38 closely-held businesses. The statute was amended to reverse the burdensome impact on small
39 corporations created by the Supreme Court's decision in Jepson v. Department of Labor and
40 Industries, 89 Wn.2d 394 (1977), while still giving all corporations the ability to cover such officers
41 who are in fact employees, on an elective basis.
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1 The procedure for giving notice of elective adoption prior to January 1, 1983, did not require
2 the filing of a specific form or document to achieve elective coverage. As well as clarifying the
3 specific classes of excluded employments to whom notice of elective adoption applied, the 1982
4 amendment to RCW 51.12.110 added the phrase underlined above. Did the legislature intend
5 thereby to exclude workers from coverage under the Act who, being mandatorily covered when the
6 amendment became effective, might later meet the test of a person excluded from mandatory
7 coverage -- where there was no intent by the employer to exclude that person from coverage and
8 where continued coverage was presumed by reporting of hours and payment of premiums -- merely
9 because the specific Department - provided form was not prepared by the employer? We find no
10 such legislative intent. We understand that section to rightfully prohibit small and large corporate
11 employers alike from claiming post-injury coverage simply by asserting the willingness to pay
12 retroactive premiums. We do not understand the legislature to have desired the withdrawal of
13 previous coverage under the particular facts in the present appeal.
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16 It seems logical to us that, once this industrial insurance account was opened with the
17 Department and the business was started up, that the hours properly reported on all mandatorily
18 covered employees together with premiums paid thereon evidenced a notice that continued
19 coverage for such employees is desired so long as hours are reported and premiums paid. We do
20 not think the legislature intended an additional requirement that a new form must be filed, except as
21 to persons who were never previously included under the mandatory coverage of the Act and the
22 employer thereafter desired to electively cover them. To hold otherwise would frustrate the liberal
23 construction of the Act for the purpose of reducing to a minimum the suffering and economic loss
24 arising from injuries and/or death occurring in the course of employment. See RCW 51.12.010.
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27 The result achieved by this analysis is fair to the Department and to all employers supporting
28 the state fund through payment of their premiums. The integrity of the Accident and Medical Aid
29 Funds is in no way impaired by our holding in this case. The Department did, in fact, receive in
30 premium income exactly as much as it would have received had Technical Castings filed the
31 Department - supplied "proper form" of elective adoption in November 1983 when Mr. Wooding
32 became a shareholder. Under the totality of these circumstances, we hold that Mr. Wooding was a
33 covered employee under the Act at the time of his injury on January 24, 1984. His claim should be
34 adjudicated on that basis.
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1 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto,
2 and a careful review of the entire record before us, we hereby enter the following:

3 **FINDINGS OF FACT**

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- 6 1. On January 26, 1984, an application for benefits was filed with the
7 Department of Labor and Industries alleging that Richard A. Wooding
8 had sustained an injury on January 24, 1984 during the course of his
9 employment with Technical Castings, Inc. On February 16, 1984, the
10 Department issued an order rejecting the claim on the grounds that the
11 "claimant was an executive officer, a shareholder, and director of a
12 corporation at the time of injury and the employer had not made
13 provisions for coverage by means of elective adoption." A protest and
14 request for reconsideration of the Department's February 16, 1984 reject
15 order was filed on behalf of the claimant on March 5, 1984, and on April
16 18, 1984 the Department issued an order adhering to the provisions of
17 its order of February 16, 1984. A notice of appeal from the
18 Department's April 18, 1984 order was filed with the Board of Industrial
19 Insurance Appeals on April 27, 1984. On May 11, 1984, the Board
20 issued its order granting the appeal, assigned it Docket No. 67,593, and
21 directed that proceedings be held on the issues raised in the notice of
22 appeal.
- 23 2. Technical Castings, Inc. filed its articles of incorporation with the
24 Secretary of State on July 21, 1982.
- 25 3. At all times from and after July 21, 1982, Richard A. Wooding was an
26 employee of the company and was a member of the Board of Directors
27 of Technical Castings, Inc. Subsequent to July 21, 1982 and prior to
28 January 1, 1983, Richard A. Wooding was elected vice-president of
29 Technical Castings, Inc.
- 30 4. At all times from and after July 21, 1982, and from the time of opening
31 its industrial insurance account, Technical Castings, Inc. included Mr.
32 Wooding's work hours in its quarterly reports of hours worked and its
33 premium payments to the Department of Labor and Industries.
- 34 5. Richard A. Wooding did not become a shareholder of Technical
35 Castings, Inc. until November 1983, and thereafter the company
36 continued to report Mr. Wooding's hours and pay premiums associated
37 with those hours in the same manner and extent as it had from the date
38 of inception of employment of Mr. Wooding.
- 39 6. Prior to January 24, 1984, Technical Castings, Inc. had not filed with the
40 Department of Labor and Industries, on a form provided by the
41 Department for such specific purpose, a notice that industrial insurance
42 coverage was being elected for its corporate executive officers.
- 43 7. On January 24, 1984, while in the course of employment as an
44 employee of Technical Castings, Inc., the claimant, Richard A. Wooding,
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1 sustained an injury when the grinding wheel he was operating broke,
2 breaking a work rest from the grinding machine, and causing the broken
3 machinery to strike and injure both of his legs.

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5 **CONCLUSIONS OF LAW**

6 Based upon the foregoing findings of fact, the Board hereby concludes as follows:

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8 1. The Board of Industrial Insurance Appeals has jurisdiction of the parties
9 and subject matter of this appeal.
- 10 2. From the time of his employment for Technical Castings, Inc. in July of
11 1982, and at least until November of 1983, Richard A. Wooding was
12 mandatorily covered under the Washington Workers' Compensation Act.
- 13 3. The provisions of RCW 51.12.110, as amended effective January 1,
14 1983, do not operate to defeat or repeal Mr. Wooding's coverage under
15 the Act for this particular claim, and the employer had constructively
16 covered him under elective adoption.
- 17 4. As of January 24, 1984, Richard A. Wooding was a covered employee
18 under the Workers' Compensation Act of this state.
- 19 5. The order of the Department of Labor and Industries dated April 18,
20 1984, adhering to the provisions of a prior order rejecting the claim on
21 the grounds that the claimant was an executive officer, shareholder and
22 director of a corporation at the time of injury and the employer had not
23 made provisions for coverage by elective adoption, is incorrect, should
24 be reversed, and the claim remanded to the Department with direction to
25 adjudicate the claim on the basis that the claimant was a covered
26 employee under the Act at the time of injury.

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29 It is so ORDERED.

30 Dated this 7th day of January, 1985.

31 BOARD OF INDUSTRIAL INSURANCE APPEALS

32
33 /s/
34 MICHAEL L. HALL Chairperson

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36 /s/
37 FRANK E. FENNERTY, JR. Member

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39 /s/
40 PHILLIP T. BORK Member