

Bolin, Bjorn Viking (I)

EMPLOYER-EMPLOYEE (RCW 51.08.070; RCW 51.08.180)

Jurors

A citizen serving as a juror is not an "employee" nor is the county an "employer" with respect to the juror. Consequently, a juror is not covered under the Act for injuries incurred while so serving.*In re Bjorn Viking Bolin (I)*, BIIA Dec., 68,166 (1985) [Editor's Note: Reversed, *Bolin v. Kitsap County*, 114 Wn.2d 70 (1990).]

Scroll down for order.

1 The employer contends that the reasoning of the Proposed Decision and Order begged the
2 issue, that it was in error in holding that the claimant is a covered employee merely because he was
3 involved in an activity which was classified in the proposed Order as an employment. The employer
4 also contends that the claimant does not qualify as an employee as that term is defined by the statutes
5 and the case law in this state.
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8 We are persuaded that the employer's argument is correct, and that it cannot be held that this
9 claimant was a covered "employee" merely because he was involved in a service or "employment" not
10 statutorily excluded. It must be admitted that logging, for example, is an "employment" that is covered
11 under the Act, but whether a specific person is an employee of a logging firm depends upon other
12 factors, including the essence of the employer- employee relationship.
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15 It must be acknowledged that jurying is a unique activity. The method of choosing a jury, its
16 duties, and compensation for the duties, are all set by statute. All jurors are "hired" -- or more properly
17 stated, chosen for service--the same way, perform the same duties, and are paid, at least within the
18 confines of each county, the same compensation. They receive a fixed standard amount for their
19 services, plus reimbursement for mileage based on distances from their residences to the courthouse.
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22 It is well settled law in this state that the test as to whether an employment relationship exists
23 depends upon whether the employer has the right to control the servant's physical conduct in the
24 performance of his duty and whether there is consent by the employee to this relationship. Novenson
25 v. Spokane Culvert and Fabricating Co., 91 Wn. 2d. 550 (1979). Under the definition of "employer" in
26 RCW 51.08.070, the term appears to mean one who "contracts" with another to perform his personal
27 labor for that other. We find, in this case, no contract of employment, no control over the claimant by
28 the county, and no consent by the claimant to such a relationship.
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31 Ten other jurisdictions have considered this question. Nine of these states have come to the
32 same conclusion, i.e., jurors are not covered employees under workers' compensation laws. The
33 single exception is in the State of Ohio. In Industrial Commission of Ohio v. Rogers, 171 NE 35, the
34 court interpreted the provisions of a statute providing that workers' compensation benefits are provided
35 to all persons in the service of a county under "appointment or contract of hire". At no time did the
36 Ohio court consider that the juror was employed under a contract of hire, but did decide that he was in
37 the service of the county under "appointment". We have no similar statute in the State of Washington
38 using the word "appointment." Therefore, the reasoning of the Ohio court is not applicable nor
39 persuasive.
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1 The following cases are in agreement that jurors are not covered employees. Board of
2 Commissioners of Eagle County, et al, 99 Colo. 83, 60 P.2d. 225 (1956); Seward v. County of
3 Bernalillo, 61 NW 52, 294 P.2d. 625 (1956); Jochen v. The County of Saginaw, 363 Mich. 648, 110
4 NW 2d. 780 (1961); Hicks v. Guilford County, 267 N.C. 364, 148 SE 2d. 240 (1966), Silagy v. State,
5 101 N.J.Supp. 455, 244 A2d 542, (1968); In re O'Malley, 281 N.W.2d. 277 (1972); Metro Dade
6 County v. Glassman, 342 So. 2d. 995 (1976); Lockerman v. Prince George County, 377 A.2d. 1177
7 (1977); and Jeansonne v. Parish of E. Baton Rouge, 354 S.2d. 619 (1977). In the Jeansonne case,
8 the court expressed the reasoning in the majority of these cases. Interpreting a statute providing that
9 the Workmen's Compensation Act shall apply to every person in the service of a state or political
10 subdivision thereof, the court stated that the law required a worker to be an employee of the state or
11 political subdivision before the statute applied. The court reasoned:

12 "Employment presupposes an agreement entered into by the parties and
13 the relationship between a juror and the parish there is no agreement.
14 Both sides are bound by statute to perform as they do. The mere fact that
15 the parish is required to pay some slight compensation to jurors is not
16 sufficient to constitute them as employees."
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18 Buttrussing its reasoning, the court noted that prisoners likewise receive some compensation for their
19 labor, but that such did not make them state employees.

20 In Board of Commissioners of Eagle County et al, supra, the court commented:

21 "It is true that counties must discharge the burden of compensation but
22 neither the service of the juror nor the obligation of the county comes of
23 appointment or contract. The county does not negotiate with the citizens
24 for its services as a juror, nor does the citizen apply to the county for
25 appointment."
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27 "When a citizen is summoned to jury duty to respond to a process running
28 in the name of the people. By the majesty of the law, not by contract,
29 does he become a juror."
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31 The court observed that acting as a juror has to do with the gravest affairs of men and when
32 determinations are made as to matters submitted to a jury, that collective action is not subject to
33 control from any source whatsoever. Since in Eagle County the State Legislature had not acted to
34 make jurors employees of the county, it was inappropriate for the judicial branch to so declare.
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36 This Board agrees with these various judicial observations. However, in the case before us the
37 claimant and the employer are in agreement on only one point: If the claimant was not an employee of
38 the county he may be considered to have been an employee of the court. Regardless of this
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1 agreement, we cannot accept this view. The reasoning of the various jurisdictions denying employee
2 status is equally applicable in our view to the court itself as an employer. If the claimant was not an
3 employee of the county, he likewise was not an employee of the judicial system.
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5 We believe that the relationship of the county and the judicial system towards a juror is the
6 same as that between a subpoenaed witness in a judicial proceedings and the parties responsible for
7 his "employment". It would not be argued that a subpoenaed witness is an employee of the county,
8 the judicial system, counsel for the parties, or any of the parties to a lawsuit. Witnesses also receive
9 compensation for their services, as well as mileage, but as in the case of jurors, this is mandated and
10 controlled by statute. The duty to appear is one of operation of law and submission to authority as a
11 citizen of the state. No other relationship is created by virtue of such obedience.
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16 **FINDINGS OF FACT**

17 After careful review of the record, the Board finds as follows:
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- 19 1. On May 11, 1984, the Department of Labor and Industries received an
20 application for benefits from Bjorn Viking Bolin, alleging that he sustained
21 an industrial injury on April 18, 1984 while he was working for the Kitsap
22 County Superior Court. On May 18, 1984, Kitsap County, a self-insured
23 employer, issued a notice of denial of the application for the reason that
24 the claimant was not a worker as defined by RCW 51.08.180. On June
25 13, 1984 the Department issued an order rejecting the claim for the
26 reasons that (1) the condition was not the result of an industrial injury (2)
27 the claimant was not under the Industrial Insurance Laws at the time of
28 injury and (3) at the time of the injury the claimant was not in the course of
29 employment. On June 14, 1984, claimant filed a protest with the
30 Department. On July 2, 1984, the Department issued an order adhering to
31 its order of June 13, 1984. On July 6, 1984, the claimant filed a notice of
32 appeal with the Board of Industrial Insurance Appeals. On July 20, 1984,
33 the Board issued an order granting the appeal, assigning it Docket No.
34 68,166 and directing that hearings be held on the issues raised by the
35 appeal.
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- 37 2. On April 18, 1984, the claimant served as a juror for the Superior Court for
38 Kitsap County at Port Orchard. The court recessed for the evening at
39 approximately 4:20 p.m. The claimant then drove directly toward his
40 home on Bainbridge Island until he was seriously injured in an automobile
41 accident.
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- 43 3. Kitsap County paid the claimant the sum provided by law of \$14.35 for
44 mileage at the rate of 20.5¢ per mile, and the sum of \$10.00 for one day
45 served as a juror on April 18, 1984.
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- 47 4. The relationship created by one's duty to serve as a juror is not one of
mutual consent and does not give rise to an employer/employee status.

