

## **Estrada, Guillermina**

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

#### **Going and coming rule**

A roadway used merely as an access road to and from the worksite by employees is not a part of the jobsite as defined in RCW 51.32.015 and RCW 51.36.040 unless the roadway is used or contracted for by the employer for the business process in which the employer is engaged. Coverage will not be extended under the Industrial Insurance Act to injuries occurring along a route to the worksite where the automobile accident was caused by the negligence of one of the drivers and not because the roadway itself contained some special hazard. *Distinguishing ITT Baking Co.* 77 Wn.2d 355 (1969)

....***In re Guillermina Estrada, Dec'd, BIIA Dec., 68 514 (1989)*** [*Editor's Note: The Board concluded the roadway was private, based on parties' stipulation and cited Hein v. Longview Fibre Co., 41 Wn. App. 745, 749 (1985) which involved a public roadway.*]

Scroll down for order.



1 **ISSUE**

2 Whether Mr. and Mrs. Estrada were employees of Esparaza Hauling and whether they were in  
3 the course of their employment when they were involved in an automobile accident on April 4, 1983  
4 which resulted in Mrs. Estrada's death and injury to Mr. Estrada.  
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7 **DECISION**

8 Pursuant to RCW 51.52.104 and RCW 51.52.106, these matters are before the Board for  
9 review and decision on a timely Petition for Review filed by the Department in response to a Proposed  
10 Decision and Order issued on August 12, 1988, in which the Department orders under appeal were  
11 reversed and this matter remanded to the Department of Labor and Industries to issue orders allowing  
12 both claims.  
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16 The evidence presented by the parties is well set forth in the Proposed Decision and Order.  
17 We agree with the conclusion of the Industrial Appeals Judge that an employer/employee relationship  
18 existed between Mr. and Mrs. Estrada and Esparaza Hauling. We find it unnecessary to elaborate on  
19 the analysis contained in the Proposed Decision and Order on this point.  
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22 However, we disagree with the conclusion reached by the Industrial Appeals Judge that Mr.  
23 and Mrs. Estrada were in the course of their employment at the time the automobile accident occurred.  
24 The general rule is that a worker is not in the course of employment while commuting to and from the  
25 employer's place of business. Westinghouse v. Department of Labor and Industries, 94 Wn.2d 875  
26 (1980). We find that the Estradas did not come within any exception to this general rule, since they  
27 were not on the jobsite at the time of the accident and since the special hazard exception does not  
28 apply.  
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32 RCW 51.32.010 provides, in part: "each worker injured in the course of his or her employment  
33 or his or her family or dependents in case of death of the worker, shall receive compensation in  
34 accordance with this chapter, . . ." The Legislature has defined "acting in the course of employment"  
35 to include "time spent going to and from work on the jobsite, . . . insofar as such time is immediate to  
36 the actual time that the worker is engaged in the work process in areas controlled by his or her  
37 employer, . . ." RCW 51.08.013. "Jobsite" is defined as "premises as are occupied, used or  
38 contracted for by the employer for the business or work process in which the employer is then  
39 engaged: ...." RCW 51.32.015; RCW 51.36.040.  
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45 The precise ownership of the road on which the automobile accident of April 4, 1983 occurred  
46 is not made absolutely clear by this record, especially with the exclusion of Exhibit No. 20. However,  
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1 the parties seem to agree that the road was private, was owned by Mercer Ranches, and that Green  
2 Circles Farm had an easement over the road for ingress and egress. See Claimant's Reply to  
3 Department's Petition for Review at 4, ll. 24-25; at 5, ll. 1-2, and ll. 6-8. Indeed, claimant concedes  
4 that "Exhibit 21 (obtained by Jack Fulk) shows that Green Circles had an easement for road purposes  
5 over the property of Mercer Ranches." Claimant's Reply to Department's Petition for Review at 5, ll.  
6 6-8. In addition, claimant agreed to the admission of Exhibit No. 21 to evidence. Thus it is a  
7 reasonable inference from the evidence in the record that the April 4, 1983 accident occurred on a  
8 private road owned by Mercer Farms, over which Green Circles Farm had an easement.  
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13 The relationship between Green Circles and Esparza Hauling, the Estradas' employer, was that  
14 Esparza Hauling contracted with Green Circles Farm to cut and haul asparagus. On April 4, 1983 Mr.  
15 and Mrs. Estrada had completed their work for Esparza for the day and were driving home when the  
16 accident occurred. Mr. Estrada sustained injuries and Mrs. Estrada died as a result of their car going  
17 off the road.  
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21 In finding coverage under the Industrial Insurance Act, the Industrial Appeals Judge determined  
22 that the roadway on which the automobile accident occurred was part of Esparza Hauling's jobsite.  
23 We disagree. The roadway where the accident occurred was not used or contracted for by Esparza  
24 Hauling for the business or work process in which that employer was engaged as required by RCW  
25 51.32.015 and RCW 51.36.040. In a remarkably similar case, the court of appeals concluded that the  
26 mere fact that the roadway on which the accident occurred was an access road used by employees in  
27 going to and coming from work is not a sufficient fact, standing alone, to make the roadway a "jobsite".  
28 Heim v. Longview Fibre Company, 41 Wash. App. 745, 749, 707 P.2d 689 (1985).  
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32 As in Heim, the conclusion that the roadway where the auto accident occurred was not a  
33 "jobsite" does not end our inquiry.  
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36 . . . A location where a worker is injured which is outside of what might be  
37 considered the jobsite, as commonly described, can be viewed as a  
38 "jobsite" within the statutory definition, if it is along a so-called "hazardous  
39 route" to the work site. That concept of long standing has the effect of  
40 extending coverage under the Industrial Insurance Act to workers who are  
41 injured or killed while traversing a hazardous route, in close proximity to  
42 the employer's premises, which is the only practical route and/or one  
43 customarily and normally used by employees engaged in the immediate  
44 act of going to or coming from the actual situs of their work. ITT  
45 Continental Baking Co. v. Schneider, 27 Wn. App. 732, 621 P.2d 1294  
46 (1980).  
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1 Heim, at 749-750.

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3 One part of the hazardous route exception test is met since it is apparent that the roadway in  
4 question was the only practical route into and out of Green Circles Farm. However, the accident  
5 causing Mrs. Estrada's death and Mr. Estrada's injuries occurred, according to Officer Richard  
6 Holman, because "[t]he speed of the vehicle was too fast for the conditions that existed at the time of  
7 the collision." TR 3/16/88 at 15.  
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10 Alternatively, according to Mr. Estrada's account, the accident was caused by a speeding car  
11 which passed him on a curve, raising dust, moving sideways towards him and blocking the road  
12 immediately in front of him. Mr. Estrada skidded, slammed on his brakes, and rolled off the side of the  
13 road.  
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16 Under either description, the accident was caused by the negligence of one of the drivers, not  
17 because the roadway itself contained some special hazard. According to Officer Holman, none of the  
18 characteristics of the road itself contributed to the accident. Claimant's Reply stresses the dust,  
19 curves, absence of guardrails and absence of speed limit signs. Yet these road conditions, which a  
20 number of witnesses found no different from other similar roads, did not cause the accident which  
21 occurred on April 4, 1983. Either Mr. Estrada's or another driver's negligence caused claimant's car to  
22 go off the road that day. Furthermore, Esparza Hauling neither owned nor controlled the use or  
23 maintenance of the roadway.  
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28 The facts in this case are distinguishable from the facts of ITT Baking Co., and In re Hamilton,  
29 77 Wn.2d 355, 462 P.2d 917 (1969) both of which were cited by the claimant in his Reply to the  
30 Department's Petition for Review. The accident in ITT Baking Co. occurred because of the work  
31 process; Mr. Schneider was struck outside the bakery by a bakery pan truck. In Hamilton, the  
32 accident was not caused by the employer's work processes, but by conditions which the employer  
33 knew existed in the area which met the statutory definition of jobsite. In the case before us, the  
34 accident occurred off the employer's premises and did not arise from the employer's business.  
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39 The accident resulted in tragic consequences. However, the "hazardous route" exception has  
40 not been extended to provide coverage in such cases. Heim at 753. Therefore, after consideration of  
41 the Proposed Decision and Order, the Petition for Review filed thereto, the Claimant's Reply to the  
42 Department's Petition for Review, and a careful review of the entire record before us, we are  
43 persuaded that Mr. and Mrs. Estrada were not in the course of their employment at the time of their  
44 automobile accident on April 4, 1983 and the Department orders are hereby affirmed.  
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3 **FINDINGS OF FACT**  
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- 5 1. In Claim No. J-377243, Mr. Francisco Estrada, the husband of Guillermina  
6 Estrada, filed a claim for survivor benefits on his own behalf and on behalf  
7 of his children on January 13, 1984 and an accident report on February 8,  
8 1984, with the Department of Labor and Industries, alleging that his wife  
9 had sustained an industrial injury on April 4, 1983 while in the course of  
10 her employment with Green Circles Farm that resulted in her death.

11 On August 9, 1984, the Department issued an order denying survivor's  
12 benefits based on the Department's determination that Guillermina  
13 Estrada was an employee of Esparza Hauling and died on April 7, 1983 as  
14 a result of an automobile accident on April 4, 1983, but at the time of the  
15 fatal injury, Guillermina Estrada was not acting in the course of her  
16 employment.

17 On August 20, 1984 Mr. Estrada filed a notice of appeal with the Board of  
18 Industrial Insurance Appeals and on August 31, 1984 the Board issued an  
19 order granting the appeal and assigning it Docket No. 68, 514 and  
20 directing that further proceedings be held in this matter.

- 21 2. In Claim No. J-371220, on January 23, 1984 Francisco Estrada filed a  
22 claim for an industrial injury while employed by Green Circles Farm. On  
23 June 19, 1984, the Department issued an order allowing the claim. On  
24 July 26, 1984, the Department held its June 19, 1984 order for naught. On  
25 August 23, 1984, the Department rejected the claim for the reason that at  
26 the time of the injury, the claimant was not in the course of his  
27 employment.

28 On August 31, 1984, the claimant filed a notice of appeal from that order.  
29 On September 25, 1984 the Board of Industrial Insurance Appeals issued  
30 an order granting the appeal, assigning it Docket No. 68, 601 and directing  
31 that further proceedings be held in this matter.

- 32 3. On April 4, 1983 Francisco and Guillermina Estrada were involved in an  
33 automobile accident on a private road owned by Mercer Farms, over  
34 which Green Circles Farm and an easement for ingress and egress.

- 35 4. Guillermina Estrada later died from injuries sustained as a result of this  
36 accident. Francisco Estrada was injured, receiving contusions and  
37 lacerations to his head, arms and hands.

- 38 5. Guillermina and Francisco Estrada were employed by Esparza Hauling  
39 Company. They were not employed by Green Circles Farm. Esparza  
40 Hauling had contracted with Green Circles Farm to cut and haul  
41 asparagus.

- 42 6. At the time of the accident, Mr. and Mrs. Estrada had completed their work  
43 for the day and were driving home.

- 44 7. The roadway on which the accident occurred was not used or contracted  
45 for by Esparza Hauling for the business or work process of the employer.  
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1 The roadway was used by employees in going to and coming from work  
2 and was the only practical route.

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4 8. The roadway on which the accident occurred was a gravel road with steep  
5 side slopes and lacked guardrails.  
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7 9. The accident occurred off the premises of the employer.  
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9 10. The accident occurred either because Mr. Estrada was driving too fast or  
10 because another car passed him too close and forced him off the road.  
11 The route was not hazardous and the accident was not caused by any  
12 hazardous condition related to Esparza Hauling's business.

13 **CONCLUSIONS OF LAW**

- 14 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties  
15 and the subject matter of these appeals.  
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17 2. On April 4, 1983, Guillermina and Francisco Estrada were not in the  
18 course of their employment with Esparza Hauling Company within the  
19 meaning of RCW 51.32.010, 51.08.013, 51.32.015 and 51.36.040, when  
20 they were involved in an automobile accident which killed Guillermina  
21 Estrada and injured Francisco Estrada.  
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23 3. The order issued by the Department of Labor and Industries on August 9,  
24 1984 which denied survivor's benefits to the beneficiaries of Guillermina  
25 Estrada on the basis that she was not in the course of her employment  
26 at the time of her death on April 4, 1983 is correct and should be affirmed.  
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28 4. The order issued by the Department of Labor and Industries on August 23,  
29 1984 which rejected the industrial insurance claim of Francisco Estrada for  
30 the reason that he was not in the course of his employment at the time  
31 of his injury on April 4, 1983 is correct and should be affirmed.

32 It is so ORDERED.

33 Dated this 15th day of March, 1989.

34 BOARD OF INDUSTRIAL INSURANCE APPEALS

35 /s/ \_\_\_\_\_  
36 SARA T. HARMON Chairperson

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38 /s/ \_\_\_\_\_  
39 PHILLIP T. BORK Member