

Heath, John

COVERAGE AND EXCLUSIONS

Jockeys

Jockeys injured while employed as "exercise boys" are subject to the mandatory coverage provisions of the Act notwithstanding the jockey exclusion of RCW 51.12.020(7). ...***In re John Heath, BIIA Dec., 68,742 (1985)*** [dissent]; ***In re Rick Obrist, BIIA Dec., 68,775 (1985)*** [dissent] [*Editor's Note: See In re Richard Ochoa, BIIA Dec., 96 2423.*]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: JOHN B. HEATH) DOCKET NO. 68,742
2)
3 CLAIM NO. J-405488) DECISION AND ORDER
4

5 APPEARANCES:
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7 Claimant, John B. Heath, by
8 Delay, Curran, Thompson and Pontarolo, per
9 Michael J. Pontarolo

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11 Employer, Vaden Ash by
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Gayle E. Barry, Thomas Chapman, and William C. Dodge, Assistants
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18 This is an appeal filed by the claimant on September 17, 1984 from an order of the
19 Department of Labor and Industries dated September 4, 1984, which adhered to the provisions of
20 an order dated April 27, 1984 wherein the Department rejected the claim on the basis that the
21 claimant was a jockey participating in or preparing for race meets licensed by the Washington
22 Horse Racing Commission, and the employer had not made provisions for coverage by means of
23 elective adoption. **REVERSED AND REMANDED.**

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27 **DECISION**

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 Department of Labor and Industries to a
30 Proposed Decision and Order issued on August 13, 1985 in which the order of the Department
31 dated September 4, 1984 was reversed, and remanded to the Department with directions to accept
32 the claim and provide benefits as required by the Industrial Insurance Act. We also consider this
33 case with a companion appeal, In re Rick L. Obrist, Docket No. 68,775, which raises an identical
34 issue.
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39 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
40 no prejudicial error was committed and said rulings are hereby affirmed.
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1 The issue presented by this appeal and the evidence presented by the parties are, for the
2 most part, adequately set forth in the Proposed Decision and Order. We have granted review
3 merely to review the scope of the exclusionary language of RCW 51.12.020(8).
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6 It appears that in adjudicating this case the Department has placed undue reliance on Mr.
7 Heath's license as a jockey, rather than his actual work status. Analysis of the applicable
8 administrative rules and statute confirms that it is the worker's working status, rather than his
9 licensed status, which controls coverage.
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12 To some extent the functions and responsibilities of jockeys and exercise boys overlap.
13 Both have the responsibility of exercising and training a horse for racing. Up to two days before a
14 race meet the exercise boy's responsibility is to provide a daily exercise regimen by galloping the
15 horse. The horse is then "breezed" for the last two days. Normally the jockey only prepares the
16 horse an hour before the race meet.
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19 There is no question that RCW 51.12.020(8) excludes from mandatory coverage:

20 "jockeys while participating in or preparing horses for race meets . . ."

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22 Nevertheless, jockeys may elect coverage and there are two classifications of risk categories in the
23 event that such election is taken. WAC 296-17-739 (Classification 67-8) includes "racing jockeys"
24 and "professional racing drivers", whereas WAC 296-17-731 (Classification 66-9) includes, among
25 others, "exercise boys" and "jockeys . . . N.O.C." (not otherwise classified). Thus, the Department
26 has recognized the different risks associated with a racing jockey as distinguished from a non-
27 racing jockey. Thus, the mere fact that a worker is licensed as a jockey does not necessarily mean
28 that he is properly classified for premium purposes as a racing jockey.
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31 In passing RCW 51.12.020(8) the Legislature intended only to exclude mandatory industrial
32 insurance coverage for persons qualified and employed as a jockey. It is clear that Mr. Heath's
33 exercising of the horse on April 10, 1984 was part of a training regimen rather than in preparation
34 for a race. Although this work may have been in violation of the rules and regulations of the
35 Washington Horse Racing Commission, it does not change his employment status. Further, this
36 analysis is consistent with the two distinct risk classifications provided for jockeys.
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39 Accordingly, for the reasons discussed, we hereby adopt the Proposed Decision and Order
40 reversing the Department order of September 4, 1984 with instructions to the Department to accept
41 Mr. Heath's application for benefits.
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1 The Proposed Findings, Conclusions and Order are hereby adopted as 1 this Board's final
2 Findings, Conclusions and Order and are 2 incorporated herein by this reference.

3 It is so ORDERED.

4 Dated this 1st day of November, 1985.

5 BOARD OF INDUSTRIAL INSURANCE APPEALS

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7 /s/
8 GARY B. WIGGS Chairperson

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10 /s/
11 FRANK E. FENNERTY, JR. Member

12 **DISSENTING OPINION**

13 The Board majority is drawing an exceedingly fine line in saying that the claimant's
14 exercising of the horse at the time of his injury "was part of a training regimen rather than in
15 preparation for a race." Is there any doubt that the horse he was "training" was a race horse?
16 What was he training the horse for, if it wasn't to "prepare" the horse for the horse races? Mr.
17 Heath was "preparing" a horse for a "race meet" within the intent of RCW 51.12.020(8), regardless
18 of whether or not he was at that time preparing the horse for a particular race in the race meet.

19 It is clear from the record -- and, indeed, a matter of common knowledge regarding the
20 horse-racing industry -- that "jockeys", i.e., persons who ride race horses, perform that general
21 function in various ways, whether riding the horse in the race itself, or "working" the horse a
22 relatively short time before a race to prepare both the horse and rider for that race, or exercising
23 race horses as part of an on-going training and conditioning regimen. Clearly, as the Board
24 majority notes, these functions overlap, and there is a lot of inter-change of riders in going from one
25 to another of these functions. I believe it was the intent of the horse racing industry -- and the
26 legislative intent -- that the 1977 exclusion from mandatory industrial insurance coverage (1977 ex.
27 sess., Ch. 323, Sec. 7) was to apply to all the above-described functions of race horse riding. That
28 was the reason for the exclusionary phrase "preparing horses for", in addition to "participating in",
29 race meets.

30 The fact that there are two different risk classifications, depending on whether the person is
31 a "racing" jockey (Class 67-8) or is a "non-racing" jockey engaged in training and exercising horses
32 (Class 66-9), is not material to the mandatory coverage issue. Allocation to the proper risk
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classification for premium rate purposes comes into play only after elective coverage has been applied for, an event which admittedly did not occur in this case.

For the foregoing reasons, I would affirm the Department's order of September 4, 1984, rejecting this claim.

Dated this 1st day of November, 1985.

/s/ _____
PHILLIP T. BORK Member