Obrist, Rick

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

IN RE: RICK L. OBRIST	)	**DOCKET NO. 68,775**
	)	
CLAIM NO. J-427080	)	**DECISION AND ORDER**

APPEARANCES:

Claimant, Rick L. Obrist, by
Delay, Curran, Thompson & Pontarolo, per
Robert H. Thompson, Jr.

Employer, Robert and Joe Miller,
(Account Finaled)

Department of Labor and Industries, by
The Attorney General, per
Gayle Barry and Greg M. Kane, Assistants

This is an appeal filed by the claimant, Rick L. Obrist, on September 21, 1984 from an order of the Department of Labor and Industries dated September 7, 1984, which adhered to the provisions of a prior order dated June 18, 1984 rejecting the claimant's application for benefits on the basis that he was a jockey participating in or preparing for race meets licensed by the Washington Horse Racing Commission, and the employer had not made provisions for coverage by means of elective adoption. **REVERSED AND REMANDED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by Mr. Obrist to a Proposed Decision and Order issued on April 1, 1985 in which the order of the Department dated September 7, 1984 was affirmed. We also consider this case with a companion appeal, In re John B. Heath, Docket No. 68,742, which raises an identical issue.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The issue presented by this appeal and the evidence presented by the parties are, for the most part, adequately set forth in the Proposed Decision and Order. We have granted review because in our view RCW 51.12.010 requires a narrower interpretation of the exclusionary language of RCW 51.12.020(8) than that applied by the Department of Labor and Industries.

Rick Obrist, the claimant, testified that he has worked both as an exercise boy (gallop boy) and as a jockey, and is currently licensed as a jockey. In 1983 Mr. Obrist worked for Joe Miller and Bob

Miller as both a jockey and an exercise boy. However, in 1984 he worked for them exclusively as an exercise boy. On April 4, 1984, he posted a public notice stating that from 5:00 a.m. to 10:00 a.m. he would be working as a gallop boy and would not be considered a jockey. At 7:30 a.m. on May 25, 1984, while exercising a horse for the Millers, he was thrown from the horse and injured. Mr. Obrist was not assigned to ride that horse as a jockey and, in his opinion, he was working as an exercise boy.

Mr. Obrist's testimony is supported by the testimony of fellow jockeys who stated that an exercise boy customarily gallops horses in the morning as part of the horse's training regimen. A jockey will run a horse approximately an hour prior to a race to prepare both the jockey and the horse for the upcoming race. In their opinion Rick Obrist was working as an exercise boy, not a jockey, at the time of his injury.

To some extent the functions and responsibilities of jockeys and exercise boys overlap. Both have the responsibility of exercising and training a horse for racing. Up to two days before a race meet the exercise boy's responsibility is to provide a daily exercise regimen by galloping the horse. The horse is then "breezed" for the last two days. Normally the jockey only prepares the horse an hour before the race meet, which usually begins at 4:00 p.m.

It appears that both the Department and the dissent have placed undue reliance on Mr. Obrist's license as a jockey, rather than his actual work status. To put it another way, does the mere fact that a horse rider has a license to be a jockey make him a jockey? Analysis of the applicable administrative rules and statute confirms that it is the worker's working status, rather than his licensed status, which controls his coverage.

There is no question that RCW 51.12.020(8) excludes from mandatory coverage:

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

Nevertheless, jockeys may elect coverage and there are two classifications of risk categories in the event that such election is taken. WAC 296-17-739 (Classification 67-8) includes "racing jockeys" and "professional racing drivers", whereas WAC 296-17-731(Classification 66-9) includes, among others, "exercise boys" and "jockeys . . . N.O.C." (not otherwise classified). Thus, the Department has recognized the different risks associated with a racing jockey as distinguished from a non-racing jockey. Thus, the mere fact that a worker is licensed as a jockey does not necessarily mean that he is properly classified for premium purposes as a racing jockey.

In passing RCW 51.12.020(8) the Legislature intended only to exclude mandatory industrial insurance coverage for persons qualified and employed as a jockey. As a jockey's preparation of a horse only occurs on the day the race is to occur, and no galloping of the horse occurs for two days prior to a race, it is clear that Mr. Obrist's galloping of the horse was part of a training regimen rather than in preparation for a race. Although this work may have been in violation of the rules and regulations of the Washington Horse Racing Commission, it does not change his employment status. Further, this analysis is consistent with the two distinct risk classifications provided for jockeys.

Accordingly, for the reasons discussed, we reverse the Department order of September 7, 1984 and remand it to the Department with instructions to accept Mr. Obrist's application for benefits and to take such further and appropriate action as is indicated or required by law.

FINDINGS OF FACT

1. On June 5, 1984, the claimant, Rick L. Obrist, filed an accident report with the Department of Labor and Industries alleging an industrial injury on May 25, 1984, while in the course of his employment with Robert and Joe Miller. On June 18, 1984, the Department issued an order rejecting the claim for the reason that the claimant was a jockey participating in or preparing for race meets licensed by the Washington horse racing commission, and the employer had not made provisions for coverage by means of elective adoption. On July 20, 1984, the Department received a protest and request for reconsideration of the June 18, 1984 Department order. On July 27, 1984, the Department issued an order holding the June 18, 1984 order in abeyance. On September 7, 1984, the Department issued an order holding that the claim was to remain rejected pursuant to the provisions of the June 18, 1984 Department order. On September 21, 1984 the Board of Industrial Insurance Appeals received a notice of appeal filed on behalf of the claimant, from the September 7, 1984 Department order. On October 3, 1984, the Board issued its order granting the appeal, assigning it Docket No. 68,775, and directing that proceedings be held.

2. On May 25, 1984, Rick L. Obrist was thrown from a horse, trampled and suffered injuries requiring medical treatment, while in the course of his employment as an exercise boy for Robert Miller and Joe Miller.

3. On May 25, 1984 the claimant, Rick L. Obrist, was hired as an exercise boy to train a horse, and was not employed as a jockey participating in or preparing a horse for a race meet.

CONCLUSIONS OF LAW

1. This Board has jurisdiction of the parties and the subject matter to this appeal.

2. When employed as an exercise boy, the claimant is not excluded from coverage of the Industrial Insurance Act pursuant to RCW 51.12.020(8).

3. The order of the Department of Labor and Industries dated September 7, 1984, which adhered to the provisions of a prior order dated June 18, 1984 rejecting claimant's application for benefits on the basis that the claimant was a jockey participating in or preparing horses for race meets licensed by the Washington horse racing commission and the employer had not made provisions for coverage by means of elective adoption, is incorrect and should be reversed and remanded with instructions to allow the claimant's application for benefits.

It is so ORDERED.

Dated this 1st day of November, 1985.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/_____
GARY B. WIGGS Chairperson

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

DISSENTING OPINION

The Board majority is drawing an exceedingly fine line when it determines that the claimant at the time of his injury was engaged to "train a horse" but was not engaged in "preparing a horse for a race meet." Is there any doubt that the horse he was "training" was a race horse? What was he training the horse for, if it wasn't to "prepare" the horse for the horse races? Ms. Obrist was indubitably "preparing" a horse for a "race meet" within the intent of RCW 51.12.020(8), regardless of whether or not he was at that time preparing the horse for a particular race in the race meet.

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

Decision and Order, that was the reason for the exclusionary phrase "preparing horses for", in addition to "participating in", race meets.

The fact that there are two different risk classifications, depending on whether the person is a "racing" jockey (Class 67-8) or is a "non-racing" jockey engaged in training and exercising horses (Class 66-9), is not material to the mandatory coverage issue. Allocation to the proper risk 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 adopt the Proposed Decision Order in toto, and thereby affirm the Department's order of September 7, 1984, rejecting this claim.

Dated this 1st day of November, 1985.

/s/_____
PHILLIP T. BORK, Member