

Martin, Marlene

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

Dual purpose doctrine

A worker injured commuting to work by her regular route was not brought within the course of employment simply because she intended to deposit mail for her employer enroute. The personal commuting trip would have gone forward and the worker would have followed the same route even in the absence of the business errand. ...*In re Marlene Martin*, BIIA Dec., 85 2862 (1987) [dissent]

Scroll down for order.

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS

STATE OF WASHINGTON

1
2 **In Re: MARLENE ANN MARTIN**) **DOCKET NO. 85 2862**
3)
4 **CLAIM NO. S-844887**) **DECISION AND ORDER**
5)
6

7 APPEARANCES:

8
9 Claimant, Marlene Ann Martin, by
10 Richard R. Roth

11
12 Self-Insured Employer, Group Health Cooperative, by
13 Schwabe, Williamson, Wyatt & Lenihan, per
14 Gary D. Keehn
15

16 This is an appeal filed by the claimant on October 3, 1985 from
17 an order of the Department of Labor and Industries dated August 13,
18 1985, which set aside and held for naught a prior order dated May 22,
19 1985, and ordered the claim remain rejected for the reason that at the
20 time of the injury the claimant was not in the course of employment.
21 Affirmed.

22 DECISION

23 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is
24 before the Board for review and decision on a timely Petition for
25 Review filed by the employer to a Proposed Decision and Order issued
26 on July 30, 1986, in which the order of the Department dated August
27 13, 1985 was reversed, and the claim remanded to the Department of
28 Labor and Industries with instruction to issue an order requiring the
29 self-insured employer to accept this claim as an industrial injury on
30 the ground claimant was in the course of her employment at the time of

2/11/87

1 her injury.

2 The Board has reviewed the evidentiary findings in the record of
3 the proceedings and finds that no prejudicial error was committed;
4 accordingly, said rulings are hereby affirmed.

5 The Proposed Decision and Order found that the claimant was
6 acting with a "dual purpose" at the time and place she was injured on
7 the morning of March 22, 1985, i.e., (1) commuting via her usual
8 personal-journey route to reach her employer's business premises and
9 go to work, and (2) intending to mail some business correspondence
10 which she was carrying, the first thing that morning to meet a mailing
11 deadline. On this basis, the Proposed Decision found her to be acting
12 "in part" in furtherance of her employer's business and thus in the
13 course of employment.

14 However, the long-established "dual purpose rule," conceived by
15 Judge Cardozo in the landmark case of Marks v. Gray, 251 N.Y. 90, 167
16 N.E. 181 (1920), and since followed in countless numbers of workers'
17 compensation cases (including this Board's decision In re Clayton
18 Henneman, Docket No. 55,132, 8/14/80), when correctly applied to the

19 facts of this case, compels the opposite result. Judge Cardozo held:

20 "The test in brief is this: If the work of the
21 employee creates the necessity for travel, he is
22 in the course of his employment, though he is
23 serving at the same time some purpose of his own .
24 . . . If however, the work has no part in creating
25 the necessity for travel, if the journey would
26 have gone forward though the business errand had
27 been dropped, and would have been canceled upon
28 failure of the private purpose, though the
29 business errand was undone, the travel is then
30 personal, and personal the risk."
31

32 This principle is as applicable to trips going and coming between

1 work and home as it is to other types of dual-purpose trips or
2 errands. Vol. 1, Larson's Workmen's Compensation Law, Sec. 18.00,
3 page 4-251. Larson sets forth the test at Sec. 18.21, page 4-277:
4 "When an employee, in the course of his normal journey off
5 the premises to and from work, performs some concurrent
6 service for his employer, the question whether the trip
7 becomes an exception to the usual rule excluding off-
8 premises going and coming journeys is determined by the same
9 principles that apply to out-of-town trips under Marks v.
10 Gray. In all such cases, we start with a personal motive--
11 that of getting (or coming from) home--which would have
12 caused the employee to take the trip in any case. The
13 question then becomes: was the business mission of such
14 character or importance that it would have necessitated a
15 trip by someone if this employee had not been able to handle
16 it in combination with his homeward (or business-ward)
17 journey?"

18 The answer to the foregoing question, in the case before us, is
19 clearly "no".

20 The claimant commuted to work that day at the same time,
21 regardless of the intent to mail the envelopes, and she would have
22 used the same off-premises route she chose, even if she was not
23 carrying some business memos. If another Group Health employee had
24 undertaken the mailing task, that employee would not have necessarily
25 taken the same route as did the claimant the morning of her injury,
26 nor would the mailing task have necessitated any trip off the office
27 premises. Nor did mailing the envelopes by the claimant compel her to
28 mail them when she did, on her way to work; she could just as easily
29 have placed them in the mail after she had arrived at her office. In
30 summary, then, claimant was simply in her personal commute to work at
31 the time and place of her injury, and such exact trip would have
32 occurred even in the absence of any business errand. The injury did
33 not occur in the course of her employment. The Department properly

1 rejected the claim.

2 In conclusion, if allowance of this type of claim were held
3 correct under the law, it could put tens of thousands of persons
4 within the course of their employment while commuting to and from home
5 and work, seriously emasulating the long-recognized going-and-coming
6 exclusion. It is common knowledge that many people, particularly in
7 office and service-type occupations--professionals, executives,
8 managerial, administrative assistants, teachers, etc., etc.--in fact
9 almost any employee whose work is not strictly physical -- have
10 occasion to carry office work home with them. Simply by carrying such
11 work while engaged in their normal personal commute to and from their
12 regular place of employment does not expand the Act's coverage to such
13 commuting. Such a result appears to be a ludicrous extension of the
14 course of employment concept, with potentials for abuse and with
15 far-reaching consequences.

16 FINDINGS OF FACT

17 Finding 1 of the Proposed Decision and Order entered in this
18 matter on July 30, 1986 is hereby adopted by the Board and
19 incorporated herein by this reference. In addition, the Board finds:

20 2. On March 22, 1985 the claimant was employed in
21 Seattle by Group Health Cooperative as Office
22 Manager and Executive Secretary to the Senior Vice
23 President for Operations. At the time she was
24 injured on March 22, 1985, the claimant had been
25 employed in that capacity for 18 months.

26
27 On March 21, 1985, the day prior to her injury,
28 the claimant was called into the office of Ann
29 Smith, Administrative Assistant to the Senior Vice
30 President for Operations. Ms. Smith informed Ms.
31 Martin that she would need Ms. Martin's help to
32 retype a memo, xerox copies of the memo and mail
33 the copies to business addressees. The work had

1 to be completed and the copies mailed by the next
2 morning to meet Ms. Smith's deadline. Ms. Martin
3 was able to complete the retyping and xeroxing in
4 the office on March 21, 1985, but did not have
5 time to place the memos in their envelopes, stamp
6 the envelopes, and mail them by 5:00 p.m. that
7 day. She informed Ms. Smith that she would
8 perform those tasks at home and mail the memos in
9 the morning mail in order to comply with the
10 deadline. While Ms. Martin was at home the
11 evening of March 21, 1985, she folded the memos,
12 placed them in envelopes and stamped the
13 envelopes. She went to work the following day,
14 March 22, 1985, per usual custom, in her carpool.

15 The carpool car was parked in a parking lot close
16 to the office building at 300 Elliott Avenue West,
17 in which Group Health leases space for its
18 operations office. The claimant exited the car,
19 walked across the street and proceeded to walk
20 down a cement driveway which led to the
21 underground parking area of the building at 300
22 Elliott Avenue West. As the claimant reached the
23 lower end of the driveway, she caught her heel in
24 a metal grate and experienced a sharp pain in her
25 back. She continued to walk into the underground
26 parking area, toward the elevator leading to the
27 Group Health offices on other floors within the
28 building.

29
30 Ms. Martin proceeded through the parking area to
31 the elevator, rode the elevator to the first
32 floor, exited the elevator, deposited the mail in
33 the first floor mail drop, re-entered the elevator
34 and proceeded to her fifth floor office. Later
35 that day she was taken to the hospital for
36 treatment of her back.

37
38 Group Health maintains offices on the second,
39 third and fifth floors of the building at 300
40 Elliott Avenue West. The mail drop on the first
41 floor is a faster pick-up than the mail drop on
42 the fifth floor.

43
44 Regular working hours in the operations division
45 at Group Health are from 8:00 a.m. to 5:00 p.m.
46 Group Health management expects work to be
47 completed within those hours. Ms. Martin would,
48 however, often be assigned work between 3:00 and
49 4:00 p.m. which would have to be completed, and in
50 the early morning mail the following day. During
51 March of 1985 she took work home three to four
52 nights a week. Although her supervisors did not
53 specifically direct her to work overtime, they

1 were aware that work was done at home by the
2 claimant as well as other employees.
3

- 4 3. On March 22, 1985 the claimant sustained a sudden
5 and tangible happening of a traumatic nature when
6 she was walking down a concrete driveway into the
7 premises of 300 Elliott Avenue West, caught her
8 heel in a metal grate, and experienced a sharp
9 pain in her low back.
10
- 11 4. As a proximate result of the incident on March 22,
12 1985, the claimant sustained a condition diagnosed
13 as a low back strain.
14
- 15 5. At the time and place the claimant sustained her
16 low back strain on March 22, 1985, she was enroute
17 to work, and intended to mail memos in the first
18 floor mail drop at 300 Elliott Avenue West to
19 comply with the mailing deadline established by
20 her employer. She could have mailed the memos
21 after arriving at her office, or she could have
22 used a different route to reach the mailbox, or
23 other employees could have mailed the memos at the
24 start of work that day.
25
- 26 6. At the time and place the claimant sustained her
27 low back strain on March 22, 1985, she was
28 following her customary route to go to work at
29 Group Health. This route was the shortest
30 available route between her carpool parking lot
31 and the Group Health Operations Office. She would
32 have used this same route, at the same time,
33 regardless of whether she was carrying, and
34 intending to mail, memos for her employer.
35
- 36 7. The mailing of the memos would not have
37 necessitated this particular trip to accomplish
38 the mailing, if the claimant had not handled such
39 task at the end of her personal commuting trip.
40
- 41 8. At the time and place the claimant strained her
42 low back on March 22, 1985, the claimant was
43 commuting to work, and not acting at her
44 employer's direction or in furtherance of her
45 employer's business.
46

47 CONCLUSIONS OF LAW

48

- 49 1. The Board of Industrial Insurance Appeals has
50 jurisdiction of the parties and the subject matter
51 of this appeal.
52
- 53 2. On March 22, 1985 the claimant was not acting in

1 the course of her employment with Group Health
2 Cooperative at the time and place she sustained an
3 injury to her back, within the contemplation of
4 RCW 51.08.013.

- 5
6 3. The order of the Department of Labor and
7 Industries dated August 13, 1985, which set aside
8 and held for naught the prior order dated May 22,
9 1985, and ordered the claim remain rejected for
10 the reason that at the time of the injury the
11 claimant was not in the course of her employment,
12 is correct and should be affirmed.

13 It is so ORDERED.

14
15 Dated this 11th day of February, 1987.

16
17 BOARD OF INDUSTRIAL INSURANCE APPEALS

18
19
20 /s/ _____
21 GARY B. WIGGS Chairperson

22
23
24 /s/ _____
25 PHILLIP T. BORK Member

26
27
28
29 DISSENT

30
31
32 I dissent from the Board's majority decision, and I am not at all
33 concerned that allowance of claims with factual situations of this
34 type may have far-reaching consequences in expanding the Act's
35 coverage. The Proposed Decision and Order summarized this case well
36 in stating:

37 "The evidence, however, also establishes that Ms. Martin was
38 acting with a dual purpose as she was walking down the
39 driveway toward the parking garage on March 22, 1985. She
40 intended to go to work via her customary route, and she
41 intended to mail the memos first thing that morning to
42 comply with a mailing deadline established by her employer.

43 Consequently at the time of the claimant's injury she was
44 acting in part in furtherance of her employer's business.
45 The fact that she was simultaneously proceeding to work and
46 to the mail drop does not negate the business purpose of
47 compliance with the mailing deadline."
48

1 RCW 51.08.013 provides that "acting in the course of employment"
2 means, among other things, "the worker acting . . . in the furtherance
3 of his or her employer's business." The claimant was so acting when
4 she was injured. So be it!

5
6
7
8

9 I would adopt the Proposed Decision and Order totally, and
10 thereby reverse the Department's order of August 13, 1985, and direct
11 allowance of this claim.

12 Dated this 11th day of February, 1987.

13
14
15
16
17

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