

Buchheit, Joseph

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

Going and coming rule

Parking area exclusion (RCW 51.08.013)

Although security guard's injury occurred in the employer's parking lot, he was at the time furthering his employer's interests by retrieving messages concerning employees whom he supervised and he was therefore in the course of employment under the "special errand" exception to the going and coming rule.*In re Joseph Buchheit, BIIA Dec., 88 2674 (1989)*

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: JOSEPH J. BUCHHEIT**) **DOCKET NO. 88 2674**
2)
3 **CLAIM NO. K-326582**) **DECISION AND ORDER**
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5 APPEARANCES:

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7 Claimant, Joseph J. Buchheit, by
8 Springer, Norman & Workman, per
9 John R. Dick

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11 Employer, Columbia Security, by
12 Douglas A. Harvey, President and Denise Vargo-Harvey, General Manager

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Nancy J. Hovis and Deborah J. Lazaldi, Assistants and by Shawn Ruth, Paralegal
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18 This is an appeal filed by the claimant, Joseph J. Buchheit, on June 30, 1988 from an order of
19 the Department of Labor and Industries dated May 3, 1988 which set aside and held for naught an
20 order dated August 24, 1987 and rejected the claim for the reasons that: there was no proof of a
21 specific injury at a definite time and place in the course of employment; claimant's condition was not
22 the result of an industrial injury as defined by the industrial insurance laws; claimant was not under the
23 industrial insurance laws at the time of injury; at the time of injury the claimant was not in the course of
24 employment; and the injury occurred in a parking area and was not covered under the industrial
25 insurance laws in accordance with RCW 51.08.013. The order also made demand for repayment of
26 time-loss compensation paid for the period December 3, 1986 through July 6, 1987 in the amount of
27 \$3,367.62. **REVERSED AND REMANDED.**
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33 **DECISION**

34 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
35 and decision on timely Petitions for Review filed by the employer and the Department of Labor and
36 Industries in response to a Proposed Decision and Order issued on March 1, 1989 by which the order
37 of the Department dated May 3, 1988 was reversed and the matter remanded to the Department to
38 allow the claim for an industrial injury of December 2, 1986 and to take such other action as may be
39 indicated or provided by law.
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42 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
43 prejudicial error was committed and said rulings are hereby affirmed.
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1 The claimant, Joseph J. Buchheit, was employed as a sergeant with Columbia Security in
2 Longview, Washington. He was scheduled to work as a security guard at 3 p.m. on December 2,
3 1986. His jobsite on that day was a jewelry store. The usual procedure for a security guard would be
4 to report directly to the jobsite and report in to the main office by radio. Mr. Buchheit, however, worked
5 from time to time as a patrol supervisor. In that capacity he was responsible for taking action with
6 respect to employees pursuant to notices or messages posted on the bulletin board at Columbia
7 Security's main office.
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11 Mr. Buchheit had previously told his employer that he might be late for work on December 2,
12 1986 because his wife had been hospitalized. About 2:45 on that date, however, he reported to the
13 main office to advise his employer that he wouldn't be late, to chat about his wife's condition, and to
14 pick up messages concerning persons whom he supervised. Upon leaving the employer's office to go
15 to the jewelry store, Mr. Buchheit fell and injured his shoulder. He claims that the injury occurred on
16 the sidewalk adjacent to the employer's office. Other evidence suggests that the injury occurred in a
17 parking area which was reserved for employer vehicles.
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21 According to the employer, Mr. Buchheit was not required to pick up his messages until he
22 reported for patrol duty. Since Mr. Buchheit was assigned to work as a security guard on the date in
23 question, the employer and the Department contend that it was not necessary for Mr. Buchheit to pick
24 up his messages on December 2nd. Mr. Buchheit, on the other hand, testified that he was required to
25 pick up his messages every day and to act on those messages as soon as possible. It is noted that
26 Mr. Buchheit was scheduled to work two shifts on December 2nd, the first as a security guard at the
27 jewelry store. The record does not disclose whether the second shift would have required Mr.
28 Buchheit to work on security or on patrol.
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32 The parties have conceded that Mr. Buchheit sustained an injury to his right shoulder area as
33 a result of his fall, which required medical attention. The sole issues presented by this appeal are
34 therefore:
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- 36 1. Whether at the time of the December 2, 1986 injury the claimant was in
37 the course of employment with his employer; and
- 38 2. Whether the parking area exclusion of RCW 51.08.013 precludes
39 coverage of the injury.
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43 Our Industrial Appeals Judge concluded that the parking area exclusion of RCW 51.08.013
44 does not apply to injuries occurring in a parking area reserved exclusively for employer and customer
45 vehicles. He also concluded, however, that the claimant's injury occurred on the sidewalk adjacent to
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1 the employer's offices and not in the parking area. Finally, as an alternative ground for allowing the
2 claim, he concluded that the claimant was injured in the course of his employment with his employer
3 because at the time of the injury he was engaged in a "special errand" for his employer and therefore
4 in the course of employment. We disagree with our Industrial Appeals Judge's conclusion that the
5 claimant's injury did not occur in a "parking area" as contemplated by RCW 51.08.013. However,
6 because we find that the claimant was nevertheless in the course of employment at the time of his
7 injury, we agree that the order of the Department rejecting the claim should be reversed and the claim
8 allowed.
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13 It is the general rule in this state that a worker is not "acting in the course of employment"
14 while going to or from the jobsite. Flavorland Indus., Inc. v. Schumacher, 32 Wn.App. 428 (1982). A
15 statutory exception to this general rule is contained in RCW 51.08.013. That statute includes within
16 the definition of "acting in the course of employment" the "time spent going to and from work on the
17 jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual
18 time that the worker is engaged in the work process in areas controlled by his or her employer, ..."
19 Yet there is an exception to this statutory inclusion, which is also contained in RCW 51.08.013.
20 "Parking areas" are excluded from the areas constituting the jobsite.
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24 It must be noted that the statutory exception to the going and coming rule as contained in
25 RCW 51.08.013 is but one exception to the going and coming rule. Another exception, as enunciated
26 in our decision of In re Brian Kozeni, Dec'd., BIIA Dec., 63,062 (1983), is the "special errand" rule.
27 That rule, as set forth in 1 A. Larson, The Law of Workmen's Compensation, § 16.10 provides that:

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31 When an employee, having identifiable time and space limits on his
32 employment, makes an off- premises journey which would normally not be
33 covered under the usual going and coming rule, the journey may be
34 brought within the course of employment by the fact that the trouble and
35 time of making the journey, or the special inconvenience, hazard or
36 urgency of making it in the particular circumstances, is itself sufficiently
37 substantial to be viewed as an integral part of the service itself.
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40 Thus, even though Mr. Buchheit's injury may have occurred within a parking area excluded
41 from the statutory exception to the going and coming rule as contained in RCW 51.08.013, it may still
42 be an injury compensable under our Industrial Insurance Act by virtue of the fact that it falls within the
43 "special errand" exception to the going and coming rule which places the worker in the course of
44 employment.
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1 We agree with the contention of the Department and the employer that Mr. Buchheit's injury
2 occurred in a "parking area." Although Mr. Buchheit testified that the injury occurred on the sidewalk
3 adjacent to the parking lot, contemporaneous statements made to his employer and to hospital staff
4 suggest that he actually fell in the parking lot. If Mr. Buchheit actually fell on the sidewalk, why, then,
5 did he tell people at the time of his injury that he fell in the parking lot? Further, we note that he
6 sustained a right knee abrasion when he fell. He explains that this occurred when he rolled over to get
7 up. We find it more likely that Mr. Buchheit hurt his knee when he fell forward off the sidewalk and into
8 the parking lot.
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10 Our Industrial Appeals Judge also predicated his decision in part on the fact that the parking
11 area was limited to employer-owned vehicles or vendor vehicles. He believed that the parking area
12 exclusion of RCW 51.08.013 was therefore inapplicable because it was not an "employee" parking
13 area. There is nothing in RCW 51.08.013 which expressly limits the parking area exception to
14 "employee" parking areas. A further investigation of legislative intent might reveal that our Industrial
15 Appeals Judge is correct in his conclusion that the parking area exception is so limited. However,
16 because of our disposition of this appeal it is not necessary to resolve that issue in this case.
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18 Admittedly, there is marked disagreement between Mr. Buchheit and his employer as to the
19 need for him to report to the office to retrieve his messages. But whether he was required to do so or
20 not, it is clear from the evidence that Mr. Buchheit regularly did report to the office to pick up his
21 messages. While he may not have been compensated for his extra efforts in retrieving messages
22 concerning employees he was obligated to supervise, it is sufficient that he was permitted to do so and
23 in fact appeared to do so diligently and on a regular basis. It is apparent that by reporting to his
24 employer's office Mr. Buchheit was furthering his employer's interests by keeping current on any
25 matters affecting the persons he supervised. The fact that he may have performed such services
26 without compensation is a tribute to his dedication as a supervisor.
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28 Thus, this special errand itself meets the general definition of "acting in the course of
29 employment" in RCW 51.08.013, since it constituted "the worker acting in the furtherance of his or
30 her employer's business ...". It should also be noted that RCW 51.08.013 provides further that " ... it is
31 not necessary that at the time an injury is sustained by a worker he or she be doing the work on
32 which his or her compensation is based or that the event be within the time limits on which industrial
33 insurance or medical aid premiums are paid."
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1 After a careful review of the record of proceedings, including the briefs submitted by the
2 parties, the Proposed Decision and Order, and the Petitions for Review filed in response thereto, we
3 conclude that the order of the Department dated May 3, 1988 which rejected the claim is incorrect and
4 should be reversed and this claim remanded to the Department with direction to allow the claim and to
5 provide the claimant with such benefits as may be indicated by the law and the facts.
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9 **FINDINGS OF FACT**

- 10 1. On December 15, 1986 the Department of Labor and Industries received a
11 report of accident filed on behalf of the claimant, Joseph J. Buchheit,
12 alleging an industrial injury to have occurred on December 2, 1986 while in
13 the course of his employment with his employer, Columbia Security. On
14 December 24, 1986 the Department entered an order rejecting the claim
15 on the ground that the injury occurred in a parking area and was not
16 covered under the industrial insurance laws in accordance with RCW
17 51.08.013. On February 20, 1987 the claimant filed a protest and request
18 for reconsideration of the Department order dated December 24, 1986.
19 On April 15, 1987 the Department issued an order which set aside the
20 order of December 24, 1986 and held it for naught.

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22 On August 24, 1987 the Department issued an order allowing the claim for
23 the injury of December 2, 1986 for medical treatment and other benefits as
24 may be authorized or required by law. On September 4, 1987 the
25 employer, Columbia Security, filed a protest and request for
26 reconsideration of the Department order dated August 24, 1987. On
27 September 18, 1987 the Department issued an order providing for the
28 payment of time-loss compensation for the period December 3, 1986
29 through June 30, 1987. On September 22, 1987, the Department issued
30 an order terminating time-loss compensation with payment for the period
31 July 1, 1987 through July 6, 1987. On October 1, 1987, the employer filed
32 a protest and request for reconsideration of the Department order dated
33 September 22, 1987.

34 On October 23, 1987 the claimant filed a protest and request for
35 reconsideration of the calculation of monthly wages using actual time
36 worked as opposed to the estimate and averaging process represented on
37 the accident report. On December 31, 1987 the Department issued an
38 order providing for partial payment of time-loss compensation for the
39 period December 3, 1986 through June 30, 1987, less a deduction for
40 time-loss compensation previously paid for the same period. On January
41 5, 1988, the Department issued an order providing for partial payment of
42 time-loss compensation from July 1, 1987 through July 6, 1987, less a
43 deduction for prior time-loss compensation paid for the same period.

44 On January 27, 1988 the Department issued an order holding the order
45 dated August 24, 1987 in abeyance. On May 3, 1988 the Department
46 issued an order setting aside the order dated August 24, 1987 and holding
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1 it for naught, providing that orders dated September 18, 1987, September
2 22, 1987, December 31, 1987 and January 5, 1988 be modified from final
3 to interlocutory orders, and rejecting the claim on the grounds that there
4 was no proof of a specific injury at a definite time and place in the course
5 of employment; that claimant's condition was not the result of an industrial
6 injury; that at the time of injury claimant was not in the course of
7 employment; and that the injury occurred in a parking area and was not
8 covered by the industrial insurance laws in accordance with RCW
9 51.08.013. The order further made demand for repayment of time-loss
10 compensation paid for the period December 3, 1986 through July 6, 1987
11 in the amount of \$3,367.62. On June 30, 1988 the claimant filed a notice
12 of appeal with the Board of Industrial Insurance Appeals from the
13 Department order dated May 3, 1988. On July 28, 1988 the Board
14 entered an order granting the appeal, which had been assigned Docket
15 No. 88 2674, and directing that proceedings be held on the issues raised
16 by the notice of appeal.

- 17 2. At approximately 2:55 p.m., on December 2, 1986, claimant, Joseph J.
18 Buchheit, suffered an injury when he fell and injured his right shoulder
19 when leaving the office of his employer, Columbia Security.
- 20 3. As a proximate result of the injury of December 2, 1986, claimant required
21 medical treatment for his right shoulder condition.
- 22 4. Claimant's fall, on December 2, 1986, occurred in a parking area adjacent
23 to the office of the employer which was reserved for vehicles owned by the
24 employer and the employer's vendors and from which employee vehicles
25 were excluded.
- 26 5. At the time of his injury of December 2, 1986 the claimant was performing
27 a "special errand" for his employer by checking for and retrieving
28 messages concerning employees over whom he had supervisory
29 responsibility, and in so doing he was furthering his employer's interests
30 and acting in the course of his employment with his employer, Columbia
31 Security.

32 **CONCLUSIONS OF LAW**

- 33 1. The Board of Industrial Insurance Appeals has jurisdiction over the parties
34 and the subject matter of this appeal.
- 35 2. On December 2, 1986 the claimant sustained an industrial injury as
36 defined by RCW 51.08.100 while he was acting in the course of his
37 employment as defined in RCW 51.08.013.
- 38 3. The parking area exception of RCW 51.08.013 does not exclude from
39 coverage under the Industrial Insurance Act the injury sustained by the
40 claimant on December 2, 1986 in the employer's parking area, since at the
41 time of such injury the claimant was acting in the furtherance of his
42 employer's business and was not merely going to and from work.

1 4. The Department order dated May 3, 1988 which set aside a Department
2 order dated August 24, 1987 and held it for naught, and which provided
3 that orders dated September 18, 1987, September 22, 1987, December
4 31, 1987 and January 5, 1988 be modified from final to interlocutory
5 orders, and which rejected the claim on the grounds that there was no
6 proof of a specific injury at a definite time and place in the course of
7 employment; that claimant's condition was not the result of an industrial
8 injury; that at the time of injury the claimant was not in the course of his
9 employment; and that the injury occurred in a parking area and was not
10 covered by the industrial insurance laws in accordance with RCW
11 51.08.013, is incorrect and is reversed. This claim is remanded to the
12 Department with direction to allow the claim for the industrial injury of
13 December 2, 1986 and to take such other action as may be indicated by
14 the law and the facts.

15 It is so ORDERED.

16 Dated this 5th day of September, 1989.

17 BOARD OF INDUSTRIAL INSURANCE APPEALS

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22 /s/
23 SARA T. HARMON Chairperson

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26 /s/
27 FRANK E. FENNERTY, JR. Member

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30 /s/
31 PHILLIP T. BORK Member