

Davis, Beryl

COVERAGE AND EXCLUSIONS

Chore service workers

Where a worker serves as a chore service worker on behalf of the Department of Social and Health Services (DSHS) and provides services to a particular individual and DSHS does not determine the rate of compensation or the number of hours worked, DSHS is not the employer at the time of injury.*In re Beryl Davis, BIIA Dec., 90 3688 (1992)* [*Editor's Note:* The Board's decision was appealed to superior court under King County Cause No. 9192-2-14920-6.]

SCOPE OF REVIEW

Coverage and exclusions

Where it appears a chore service worker, who served on behalf of the Department of Social and Health Services (DSHS) and provided services to a particular individual, is not an employee of DSHS but may be the individual's employee, and where the individual was not a party to the appeal, the Board may not determine that issue in an appeal of a Department order rejecting the claim on the basis that the worker was a domestic servant in a private home.*In re Beryl Davis, BIIA Dec., 90 3688 (1992)* [*Editor's Note:* The Board's decision was appealed to superior court under King County Cause No. 92-2-14920-6.]

Scroll down for order.

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

6 The sole issue presented by this appeal is whether Beryl June Davis was engaged in
7 employment subject to the mandatory coverage provisions of the Industrial Insurance Act when she
8 was injured on February 21, 1990. The initial step in making this determination is identifying Ms.
9 Davis' employer. Ms. Davis contends that although she was providing services to Christine K.
10 Ralston, her employer was the Washington State Department of Social and Health Services. The
11 Department of Labor and Industries and the Department of Social and Health Services contend in the
12 alternative that Ms. Davis was not an employee of DSHS, and if she were, she would be excluded
13 from coverage by the provisions of RCW 51.12.020(1).
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18 Although the Department of Social and Health Services provided Ms. Ralston with the money to
19 pay for Ms. Davis' services, most of the elements of control which are used to determine the existence
20 of an employer/employee relationship were in the hands of Ms. Ralston. Ms. Ralston paid Ms. Davis
21 directly with funds provided for that purpose by DSHS. Ms. Ralston was the sole person to determine
22 when Ms. Davis would provide chore services, the sole person to determine if the performance of
23 those services was satisfactory, and the sole person with the ability to terminate the relationship and
24 hire another chore service worker if Ms. Davis proved to be unsatisfactory. Although the Department
25 of Social and Health Services determined the amount they would provide to Ms. Ralston for chore
26 services, they did not determine the rate of compensation to be paid to Ms. Davis or the number of
27 hours to be worked. WAC 388-15-217(5) provides that a client of DSHS, Ms. Ralston in this case,
28 employs and supervises the chore provider and receives payment from DSHS which is then paid to
29 the provider. In addition, WAC 388-15-217(5) specifically provides that the client of DSHS would be
30 responsible for paying for any services or any rate of compensation exceeding that authorized by
31 DSHS. It appears clear to us that DSHS provided Ms. Ralston with money to employ a chore service
32 provider and she chose to employ Ms. Davis for the number of hours and at the rate of compensation
33 authorized by DSHS. Beryl June Davis, as a chore service worker, was not in an employee/employer
34 relationship with DSHS.
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1 Although it appears that Ms. Ralston was the employer of Ms. Davis, we do not have
2 jurisdiction to determine that issue at this time, as Ms. Ralston was not a party to these proceedings.
3 In light of the interpretation of RCW 51.12.020(1) contained in Everist v. Dep't of Labor & Indus., 57
4 Wn. App. 483 (1990), we believe Ms. Davis would also be excluded from coverage under the Act if her
5 employer was Ms. Ralston, as she was engaged in the duties of a "domestic servant" at the time she
6 was injured. The tasks performed by Ms. Davis for Ms. Ralston to a significant degree mirror the tasks
7 described in Everist at page 486 of that decision. Those tasks constitute the duties of a domestic
8 servant. By the specific provisions of RCW 51.12.020(1), this type of employment is excluded from
9 mandatory coverage under the Industrial Insurance Act. Anyone claiming benefits under the Industrial
10 Insurance Act is initially under the burden of establishing entitlement to those benefits. Olympia
11 Brewing Co. v. Dep't of Labor & Indus., 34 Wn.2d 498 (1949). As Ms. Davis has not established that
12 she was an employee of the Department of Social and Health Services at the time she suffered the
13 alleged injury on February 21, 1990, she has failed to meet her burden of establishing entitlement to
14 benefits under the Industrial Insurance Act.
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16 After consideration of the Proposed Decision and Order, the Petitions for Review filed thereto
17 on behalf of the Department of Labor and Industries and the Department of Social and Health
18 Services, and the claimant's Reply to Petition for Review, and a careful review of the entire record
19 before us, we are persuaded that the Department's order rejecting the claim is correct and must be
20 affirmed.
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22 Proposed Finding of Fact No. 1 and proposed Conclusion of Law No. 1 are hereby adopted as
23 this Board's final finding and conclusion:
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25 **FINDINGS OF FACT**

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- 27 2. On February 21, 1990, Beryl June Davis suffered an alleged injury while
28 she was providing chore services to Christina K. Ralston.
 - 29 3. On February 21, 1990, at the time of the alleged injury, Beryl June Davis
30 was not an employee of the State of Washington Department of Social
31 and Health Services.

32 **CONCLUSIONS OF LAW**

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- 34 2. On February 21, 1990, at the time of the alleged injury, the Washington
35 State Department of Social and Health Services was not the claimant's
36 employer within the meaning of RCW 51.08.070.
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1 3. The order of the Department of Labor and Industries dated June 8, 1990
2 which affirmed an order dated April 25, 1990 and rejected the claim, is
3 correct and is affirmed.
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5 It is so **ORDERED**.

6 Dated this 4th day of June, 1992.
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8 BOARD OF INDUSTRIAL INSURANCE APPEALS
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10
11 /s/
12 S. FREDERICK FELLER Chairperson
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15 /s/
16 FRANK E. FENNERTY, JR. Member
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19 /s/
20 PHILLIP T. BORK Member
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