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.]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: BERYL JUNE DAVIS	**)**	**DOCKET NO. 90 3688**
	)	
CLAIM NO. M-456361	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Beryl June Davis, by
Rumbaugh & Rideout, per
Cynthia L. Burchfield

Alleged employer, DSHS Safety/Benefits Office, by
The Office of the Attorney General, per
Gretchen Leanderson

Department of Labor and Industries, by
The Office of the Attorney General, per
Steve Putz, Assistant, and Linda Joy, Paralegal

This is an appeal filed by the claimant, Beryl June Davis, on July 19, 1990 from an order of the Department of Labor and Industries dated June 8, 1990 which affirmed an order dated April 25, 1990. The order rejected the claim on the basis that coverage did not exist because the claimant was employed as a domestic servant in a private home by an employer who had less than two employees regularly employed forty or more hours per week in such employment and the employer had not made provisions for coverage by means of elective adoption. **AFFIRMED**.

PROCEDURAL AND EVIDENTIARY MATTERS

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petitions for Review filed on behalf of the Department of Labor and Industries and the Department of Social and Health Services to a Proposed Decision and Order issued on November 6, 1991 in which the order of the Department dated June 8, 1990 was reversed and the claim was remanded to the Department with instructions to issue a further order determining that Beryl June Davis was an employee of the Department of Social and Health Services, was not engaged in domestic labor within the meaning of RCW 51.12.020(1) and to determine her eligibility for benefits under the Washington State Industrial Insurance Act.

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.

DECISION

The sole issue presented by this appeal is whether Beryl June Davis was engaged in employment subject to the mandatory coverage provisions of the Industrial Insurance Act when she was injured on February 21, 1990. The initial step in making this determination is identifying Ms. Davis' employer. Ms. Davis contends that although she was providing services to Christine K. Ralston, her employer was the Washington State Department of Social and Health Services. The Department of Labor and Industries and the Department of Social and Health Services contend in the alternative that Ms. Davis was not an employee of DSHS, and if she were, she would be excluded from coverage by the provisions of RCW 51.12.020(1).

Although the Department of Social and Health Services provided Ms. Ralston with the money to pay for Ms. Davis' services, most of the elements of control which are used to determine the existence of an employer/employee relationship were in the hands of Ms. Ralston. Ms. Ralston paid Ms. Davis directly with funds provided for that purpose by DSHS. Ms. Ralston was the sole person to determine when Ms. Davis would provide chore services, the sole person to determine if the performance of those services was satisfactory, and the sole person with the ability to terminate the relationship and hire another chore service worker if Ms. Davis proved to be unsatisfactory. Although the Department of Social and Health Services determined the amount they would provide to Ms. Ralston for chore services, they did not determine the rate of compensation to be paid to Ms. Davis or the number of hours to be worked. WAC 388-15-217(5) provides that a client of DSHS, Ms. Ralston in this case, employs and supervises the chore provider and receives payment from DSHS which is then paid to the provider. In addition, WAC 388-15-217(5) specifically provides that the client of DSHS would be responsible for paying for any services or any rate of compensation exceeding that authorized by DSHS. It appears clear to us that DSHS provided Ms. Ralston with money to employ a chore service provider and she chose to employ Ms. Davis for the number of hours and at the rate of compensation authorized by DSHS. Beryl June Davis, as a chore service worker, was not in an employee/employer relationship with DSHS.

Although it appears that Ms. Ralston was the employer of Ms. Davis, we do not have jurisdiction to determine that issue at this time, as Ms. Ralston was not a party to these proceedings. In light of the interpretation of RCW 51.12.020(1) contained in Everist v. Dep't of Labor & Indus., 57 Wn. App. 483 (1990), we believe Ms. Davis would also be excluded from coverage under the Act if her employer was Ms. Ralston, as she was engaged in the duties of a "domestic servant" at the time she was injured. The tasks performed by Ms. Davis for Ms. Ralston to a significant degree mirror the tasks described in Everist at page 486 of that decision. Those tasks constitute the duties of a domestic servant. By the specific provisions of RCW 51.12.020(1), this type of employment is excluded from mandatory coverage under the Industrial Insurance Act. Anyone claiming benefits under the Industrial Insurance Act is initially under the burden of establishing entitlement to those benefits. Olympia Brewing Co. v. Dep't of Labor & Indus., 34 Wn.2d 498 (1949). As Ms. Davis has not established that she was an employee of the Department of Social and Health Services at the time she suffered the alleged injury on February 21, 1990, she has failed to meet her burden of establishing entitlement to benefits under the Industrial Insurance Act.

After consideration of the Proposed Decision and Order, the Petitions for Review filed thereto on behalf of the Department of Labor and Industries and the Department of Social and Health Services, and the claimant's Reply to Petition for Review, and a careful review of the entire record before us, we are persuaded that the Department's order rejecting the claim is correct and must be affirmed.

Proposed Finding of Fact No. 1 and proposed Conclusion of Law No. 1 are hereby adopted as this Board's final finding and conclusion:

FINDINGS OF FACT

2. On February 21, 1990, Beryl June Davis suffered an alleged injury while she was providing chore services to Christina K. Ralston.

3. On February 21, 1990, at the time of the alleged injury, Beryl June Davis was not an employee of the State of Washington Department of Social and Health Services.

CONCLUSIONS OF LAW

2. On February 21, 1990, at the time of the alleged injury, the Washington State Department of Social and Health Services was not the claimant's employer within the meaning of RCW 51.08.070.

3. The order of the Department of Labor and Industries dated June 8, 1990 which affirmed an order dated April 25, 1990 and rejected the claim, is correct and is affirmed.

It is so **ORDERED.**

Dated this 4th day of June, 1992.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
S. FREDERICK FELLER Chairperson

/s/
FRANK E. FENNERTY, JR. Member

/s/
PHILLIP T. BORK Member