

Trusley, Julie

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

Parking area exclusion (RCW 51.08.013)

A teacher slipped on ice as she carried class materials to the classroom. The materials were in her car trunk rather than in storage at a school less than a mile away to ensure that they would be accessible since they were essential to her job. The parking lot exception did not apply and that the worker was acting in the furtherance of the employer's business by transporting critical tools of the trade.*In re Julie Trusley*, BIIA Dec., 93 3124 (1994) [dissent]

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

1 **IN RE: JULIE A. TRUSLEY**) **DOCKET NO. 93 3124**
2)
3 **CLAIM NO. T-778261**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

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7 Claimant, Julie A. Trusley, by
8 Prediletto, Halpin, Scharnikow, Bothwell & Smart, P.S., per
9 Darrell K. Smart

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11 Self-Insured Employer, Educational Service District #112, by
12 Roberts, Reinisch, Mackenzie, Healey & Wilson, P.C., per
13 Steven R. Reinisch and Craig A. Staples
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15 This is an appeal filed by the claimant, Julie A. Trusley, on July 9, 1993 from an order of the
16 Department of Labor and Industries dated June 17, 1993, which affirmed an order dated March 23,
17 1993, and rejected the claim for benefits for the reason that the injury occurred in a parking area and
18 was not covered under the industrial insurance laws in accordance with RCW 51.08.013. **REVERSED**
19 **AND REMANDED.**
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22 **PROCEDURAL AND EVIDENTIARY MATTERS**
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24 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
25 and decision on a timely Petition for Review filed by the claimant, Julie A. Trusley, to a Proposed
26 Decision and Order issued on March 30, 1994, in which the order of the Department dated June 17,
27 1993, rejecting the claim for the reason that at the time of injury the claimant was in a parking area and
28 was not covered under the industrial insurance laws, was affirmed.
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30 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no
31 prejudicial error was committed and said rulings are hereby affirmed.
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33 **DECISION**
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35 Julie A. Trusley, the claimant, was the only witness who testified in this matter. Her
36 uncontroverted testimony establishes that she was injured in the parking lot of the Goldendale Primary
37 School when she slipped on ice as she was carrying job-related materials into the school. The only
38 dispute in this appeal is whether she was acting in the course of her employment when she was
39 injured. The record establishes that at the time she was injured Ms. Trusley was acting in the course
40 of employment and her claim should be allowed.
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1 At the close of work on the day previous to her injury, Ms. Trusley had elected to carry job-
2 related equipment, described as "manipulatives," home in her car rather than returning them to
3 storage at Goldendale Primary School. Ms. Trusley testified that:
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5 [m]anipulatives are things like scooter boards, balancing balls, the large
6 balls, put kids over them and you work with them. All kinds of fine motor
7 skills.
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9 So in that sense, it would be like scissors, crayons, chalk, lace-up toys,
10 balls. Just different things like that.
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12 12/22/93 Tr. at 8.
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14 Although the distance between Goldendale Middle School and Goldendale Primary School is
15 short, less than a mile, Ms. Trusley acted reasonably in waiting until the next morning to return the
16 "manipulatives" or job-related equipment to Goldendale Primary School. In addition to the
17 inconvenience of returning the equipment to storage at Goldendale Primary School on a cold winter
18 evening, Ms. Trusley also had to be sure that the equipment would be available for use the next
19 morning. She stated that she frequently stored the "manipulatives" in the trunk of her car in order to
20 be sure that they would be accessible as they were essential to her job. The storage area assigned at
21 Goldendale Primary School was shared with others and on occasion was unavailable. In order to be
22 sure that she would have access to the materials she needed in order to provide services to children,
23 Ms. Trusley stored the materials in the trunk of her car rather than in the storage area in the school.
24 As it was absolutely essential that she have the equipment she described as "manipulatives" in order
25 to work with students, Ms. Trusley was performing a part of her job when she carried them from her
26 car to the school. Another explanation of her activities on the morning of injury which would also lead
27 to coverage is that she was returning the "manipulatives" to storage at Goldendale Primary School.
28 The nature of Ms. Trusley's job did not require that she do this at the end of the work day; she was
29 only required to have the "manipulatives" available when she worked with students. In any event, at
30 the time she was injured Ms. Trusley was transporting the "manipulatives" as a requirement of her job
31 and was, therefore, engaged in her employment as a motor team assistant.
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33 In a number of prior decisions we have been called on to determine the applicability of RCW
34 51.08.013 to situations which may on casual consideration seem to be very similar to Ms. Trusley's.
35 We declined to provide coverage for a juvenile probation officer who was injured in an automobile
36 accident on her way home from work. In re Carla A. Strane, Dckt. 90 5175 (March 17, 1992). Even
37 though work-related files were in Ms. Strane's car at the time of the accident, coverage was denied
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1 because she was going home from the jobsite and not engaged in the course of her employment. In a
2 more recent case, we denied coverage as the injury occurred in a parking lot while the worker was
3 "going to and [or] from work on the jobsite . . ." RCW 51.08.013. In re Court L. Armstrong, Dckt. 93
4 2913 (June 23, 1994). In a third appeal we provided coverage to a worker who had left the jobsite to
5 get a needed tool from his truck, on the basis that he was engaged in the course of employment at the
6 time of injury. In re Michael G. Kelly, Dckt. 92 4066 (February 16, 1994).

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10 In determining coverage, we have drawn a careful distinction between workers who are injured
11 while engaged in the course of employment and workers who are injured while "going to and from
12 work on the jobsite . . ." RCW 51.08.013. Both Strane and Armstrong were going to or from work
13 when they were injured, thus an inquiry as to where the injury occurred was appropriate. As both Kelly
14 and Ms. Trusley were acting in furtherance of their employers' businesses, they were acting in the
15 course of employment, and they were entitled to coverage when they were injured, it was unnecessary
16 to inquire as to where their injuries occurred.

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21 The parking lot exclusion contained in RCW 51.08.013 is not applicable because Ms. Trusley
22 was not merely going to work on the jobsite. She was acting in the furtherance of her employer's
23 business by transporting the implements of her job. Those implements or "manipulatives" were
24 essential to her work, and without which she evidently could not perform her work. The need to
25 handle or transport the critical tools of the trade after arriving at the jobsite distinguish Ms. Trusley's
26 and Kelly cases from the Strane and Armstrong cases.

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30 After consideration of the Proposed Decision and Order, the Petition for Review filed thereto
31 on behalf of the claimant, the Response to Petition for Review filed on behalf of the self-insured
32 employer and a careful review of the entire record before us, we are persuaded that the Department
33 order dated June 17, 1993 is incorrect and must be reversed. The claim is remanded to the
34 Department for allowance of Ms. Trusley's claim for the industrial injury of February 23, 1993.

35 **FINDINGS OF FACT**

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39 1. On March 15, 1993, the claimant, Julie A. Trusley, filed an application for
40 benefits with the Department of Labor and Industries alleging that she
41 sustained an injury on February 23, 1993, during the course of her
42 employment with Educational Service District #112. On March 23, 1993,
43 the Department of Labor and Industries issued an order rejecting the claim
44 on the basis that the injury occurred in a parking area and is not covered
45 by the industrial insurance laws in accordance with RCW 51.08.013. On
46 April 9, 1993, the claimant filed a protest to the Department order dated
47 March 23, 1993. On June 17, 1993, the Department issued an order

1 affirming its order dated March 23, 1993. On July 9, 1993, the claimant
2 filed a Notice of Appeal with the Board of Industrial Insurance Appeals
3 from the order dated June 17, 1993. On July 15, 1993, the Board issued
4 an Order Granting Appeal, assigned it Docket 93 3124, and directed that
5 further proceedings be held on the merits of the appeal.
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- 7 2. On February 23, 1993, the claimant, Julie A. Trusley, retrieved a bag of
8 equipment and supplies from the back of her car, and as she walked
9 toward the Goldendale Primary School, she slipped in the parking lot on
10 ice, injuring her knee, leg and ankle.
11 3. On February 23, 1993, as a result of the slip in the parking lot of the
12 Goldendale Primary School, the claimant sustained injuries giving rise to a
13 need for medical treatment.
14 4. When the claimant slipped and was injured on February 23, 1993, she
15 was acting in furtherance of her employer's business as she was
16 transporting equipment and supplies required in order to perform her job
17 as a motor team assistant.
18 5. When the claimant slipped and fell on February 23, 1993, she was
19 engaged in the course and scope of her employment with Educational
20 Service District #112.
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22 CONCLUSIONS OF LAW

- 23 1. The Board of Industrial Insurance Appeals has jurisdiction over the subject
24 matter and the parties in this appeal.
25 2. On February 23, 1993, when the claimant slipped and fell in the parking lot
26 at Goldendale Primary School, she was acting in the course and scope of
27 her employment with E.S.D. #112.
28 3. The Department order issued June 17, 1993, which affirmed a prior order
29 issued March 23, 1993, which denied the claim on the grounds that the
30 injury occurred in a parking area and is not covered under the industrial
31 insurance laws in accordance with RCW 51.08.013, is incorrect, and is
32 reversed and the claim remanded to the Department with directions to
33 issue an order allowing the claim for the industrial injury of February 23,
34 1993 and for such further action as may be authorized or indicated by law.
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37 It is so ORDERED.

38 Dated this 15th day of August, 1994.

39 BOARD OF INDUSTRIAL INSURANCE APPEALS

40 /s/ _____
41 S. FREDERICK FELLER Member

42 /s/ _____
43 FRANK E. FENNERTY, JR. Member
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3 **DISSENT**

4 I disagree with the Board majority. I would affirm the order of the Department dated June 17,
5 1993.
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7 The claimant was not in the course of employment nor at her jobsite when she was injured.
8 Her injury occurred in her employer's parking lot and is therefore not covered under the Industrial
9 Insurance Act. Industrial Appeals Judge Strange's summary of the evidence is not disputed and he
10 reached the correct decision based on that evidence.
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12 The majority decision in this case stands for the proposition that as long as the claimant kept
13 the "manipulatives" in her vehicle she is in the course of her employment and as long as she is
14 transporting the "manipulatives" in any way that could be construed as possibly beneficial to her
15 employer, no matter how far one must stretch to find such a connection.
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18 In this case, the claimant chose to take the manipulatives home rather than return them to her
19 place of employment, a voluntary act over which the employer had no control, and in this case,
20 provided no benefit to the employer. The claimant's decision to transport the "manipulatives" to her
21 home rather than return them to her primary jobsite was for her personal convenience--when she
22 turned from what would have been her direct route back to the jobsite to "go home," she took herself
23 out of the course of her employment. That status continued at all times the next morning for the trip to
24 her primary jobsite into the parking lot where the injury occurred. Her status continued to be that of an
25 employee coming to work and parking in an employer-provided parking lot. The presence of the
26 "manipulatives" and the need for her to carry them into and onto the employer's premises from the
27 parking lot was coincidental to her employment as a continuation of the voluntary decision to take the
28 "manipulatives" home for her personal convenience.
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35 Since the claimant was not in the course of her employment while in the employer's parking lot
36 and her presence there was not beneficial to her employer, this case becomes a simple parking lot
37 injury and is not covered.
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39 Nothing in this record justifies further erosion of the parking lot exception to coverage. Although
40 one can speculate that the injury was in part somehow related to the "manipulatives" under some
41 special circumstances theory or rule, the clear and simple fact is this injury occurred in the employer's
42 parking lot to an employee who was in the same status as any other worker in that parking lot who had
43 not yet stepped into a course of employment status.
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1 The claim was properly rejected and the Department's order should be affirmed.

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3 Dated this 15th day of August, 1994.

4 /s/
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6 ROBERT L. McCALLISTER Member
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