

74505-4

74505-4

NO. 74565-4-I  
COURT OF APPEALS,  
DIVISION I  
IN THE STATE OF WASHINGTON

---

JUSTIN D. BUCHANAN,  
*APPELLANT/PLAINTIFF*

v.

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF  
WASHINGTON,  
*RESPONDENT/DEFENDANT.*

---

BRIEF OF APPELLANT

---

LAW OFFICES OF K.L. MASON, PLLC  
KATHERINE L. MASON  
Attorney for Appellant/Plaintiff

By KATHERINE L. MASON, WSBA NO.: 29467  
Law Offices of K.L. Mason, PLLC  
4711 Aurora Avenue North  
Seattle, WA 98103  
Ph.: 206.298.5212

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2016 MAY 16 AM 11:12

**Table of Contents**

Table of Authorities ..... ii

I. Assignments of Error ..... 1

Assignment of Error No. 1 ..... 1

Assignment of Error No. 2 ..... 1

Assignment of Error No. 3 ..... 1

Assignment of Error No. 4 ..... 1

II. Issues ..... 2

III. Introduction and Statement of the Case ..... 2

IV. Standard of Review ..... 9

V. Argument ..... 8

A. When Mr. Buchanan retrieved his tools from the Johnson Brothers site, he did so for the benefit of both himself and his employer. .... 16

B. On his second trip to the jobsite on September 3, 2013, Mr. Buchanan was in the furtherance of his employer’s business and, therefore in the course of his employment ..... 11

VI. Conclusion ..... 30

Appendix A- Certified Appeal Board Record (CABR) Table of Contents  
(with duplicate documents identified by italicized font)

Appendix B- *In re Julie Trusley*, BIIA Dec., 93 3124 (1994)

## TABLE OF AUTHORITIES

### TABLE OF CASES

<i>Ball-Foster Glass Container Co. v. Dept. of Labor &amp; Indus.</i> , 163 Wash. 2d 133, 141, 177 P.3d 692 (2008).....	12, 14
<i>Belnap v. The Boeing Company</i> , 64 Wash. App 212, 222, 823 P.2d 528 (1992).....	15
<i>Birrueta v. Dept. of Labor &amp; Indus.</i> , 188 Wn. App 831, 844, 355 P.2d 531, 140 P.2d 320 (2015) .....	28
<i>Bolden v. Dept. of Transportation</i> , 95 Wn. App. 218, 974, P.2d 909 (1999).....	15
<i>Bostain v. Food Express</i> , 159 Wn. 2d 700, 712 (2007).....	10
<i>Cardillo v. Liberty Mut. Ins. Co.</i> , 330 U.S. 469, 479, 67 S. Ct 801 (1947).....	12
<i>City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.</i> , 136 Wn.2d 38, 46, 959 P.2d 1091 (1998) .....	28
<i>Clauson v. Dept. of Labor &amp; Indus.</i> , 130 Wn.2d 580, 584 (1996).....	10
<i>Cochran v. Mahoney</i> , 29 Wn. App 687, 692, 121 P.3d 747, 750 (2005).....	13, 15, 23, 24, 25, 26
<i>Crabb v. Dept. of Labor &amp; Indus.</i> , 181 Wn. App. 648, 658 (2014).....	10
<i>Dennis v. Dept. of Labor &amp; Indus.</i> , 109 Wn.2d 467, 745 P.2d 1295 (1987) .....	10, 13
<i>Hilding v. Dept. of Labor &amp; Indus.</i> , 162 Wash. 168, 298 P. 321 (1931).....	14
<i>Hobson v. Dept. Labor &amp; Indus.</i> , 176 Wash. 23, 27 P.2d 1091 (1934).....	18, 19
<i>Leary v. Dept. of Labor &amp; Indus.</i> , 18 Wash. 2d 531, 140 P.2d 292 (1943).....	21, 22
<i>Lunz v. Dept. of Labor &amp; Indus.</i> , 50 Wash.2d 273, 278, 310 P.2d 880, 883 (1957).....	13
<i>MacKay v. Dept. of Labor &amp; Indus.</i> , 181 Wash 702, 704, 44 P.2d 793, 794-795 (1935) .....	14, 15, 20, 21

<i>McIndoe v. Dept. of Labor &amp; Indus.</i> , 144 Wn.2d 252, 26 P.2d 903 (2001).....	10
<i>Olympia Brewing Co. v. Dept. of Labor &amp; Indus.</i> , 34 Wn. 2d 498 (1949).....	9
<i>Ruse v. Dept. of Labor &amp; Indus.</i> , 138 Wn.2d 1, 5-6, 977 P.2d 570 (1999).....	11
<i>Shea v. Dept. of Labor &amp; Indus.</i> , 1 Wn. App. 547, 552, 463 P.2d 269 (1969) .....	12
<i>Watson v. Dept. of Labor &amp; Indus.</i> , 133 Wn. App. 903, 909, 138 P.3d 177 (2006).....	11
<i>Westinghouse Electric Corp. v. Dept. of Labor &amp; Indus.</i> , 94 Wn.2d 875, 880, 621 P.2d 147, 150 (1980).....	16
<i>Young v. Dept. of Labor &amp; Indus.</i> , 81 Wn. App 123, 128, 913 P.2d 402 (1996).....	11

## STATUTES

RCW 51.04.010 .....	11
RCW 51.08.013 .....	13, 16
RCW 51.12.010.....	9, 10, 12
RCW 51.32.010 .....	11
RCW 51.32.015 .....	13
RCW 51.36.040 .....	13
RCW 51.52.130 .....	30
RCW 51.52.140 .....	11

## REGULATIONS

WAC 263-12-195 .....	28
----------------------	----

## I. ASSIGNMENTS OF ERROR

1. On December 18, 2015, the Superior Court erred in Conclusion of Law 2.3 when it found that the Department was entitled to judgment as a matter of law thereby rejecting Mr. Buchanan's workers' compensation claim.
2. The Superior Court erred in Conclusion of Law 2.4, in finding that Mr. Buchanan was not in the course of his employment when he suffered a back injury on September 3, 2013; it is likewise error to find that he was not acting at his employer's direction or in furtherance of his employer's business.
3. The Superior Court erred in Conclusion of Law 2.5 by affirming the Board of Industrial Insurance Appeals' March 9, 2015 order, which adopted the January 29, 2015 Proposed Decision and Order issued by Industrial Appeals Judge Randolph F. Bolong.
4. Likewise, the Superior Court erred in affirming the Department's orders dated March 25, 2014 and November 4, 2013 which rejected Mr. Buchanan's workers' compensation claim on the basis that he was not in the course of employment at the time he injured his back on September 3, 2013.

## II. ISSUE

Was Mr. Buchanan in the course of his employment when, after completing his commute home for the day, he returned to the jobsite to retrieve tools that were necessary for a work assignment starting the following morning at a new location for his employer?

## III. INTRODUCTION AND STATEMENT OF THE CASE

### A. Brief Identification of the Parties and Procedural History

This is a workers' compensation case and the appellant is the injured worker, Mr. Justin Buchanan. The Department of Labor and Industries is the Respondent. Mr. Buchanan's employer, Madden Industrial Craftsmen Inc. has not appeared.

Mr. Buchanan is a carpenter. On September 3, 2013, he sustained an injury to his low back. He filed a workers' compensation claim with the help of hospital staff the following day.

The Washington State Department of Labor and Industries issued an order on November 4, 2013, denying Mr. Buchanan's workers' compensation claim asserting he was not in the course of his employment at

the time of his low back injury. (Certified Appeal Board Record, page 38)<sup>1</sup>. This order was affirmed by the Department on March 25, 2014. (CABR p. 37). The March 25, 2014 order was timely appealed to the Board of Industrial Insurance Appeals on April 1, 2014. The Board granted the appeal on May 2, 2014. (CABR p. 41). An Industrial Appeals Judge affirmed the denial of Mr. Buchanan's claim on cross motions for summary judgment. (CABR p. 25). The IAJ's decision was adopted and became the final decision of the Board when Mr. Buchanan's Petition for Review was denied on January 26, 2015. (CABR p. 1).

Mr. Buchanan timely appealed to the King County Superior Court; a bench trial was held; the parties filed trial briefs; and oral arguments were heard. The Court's December 18, 2015 Judgment, Findings of Fact, and Conclusions of Law affirmed the Board's decision on summary judgment. (Clerk's Papers Sub 15). Mr. Buchanan then appealed to this Court.

B. Statement of Facts

---

<sup>1</sup> The Certified Appeal Board Record (CABR), for unknown reasons, contains many, lengthy duplicates. For example, there are three copies of Mr. Buchanan's 66-page discovery deposition. In an attempt to assist the Court, attached as Appendix A to this brief is a Table of Contents, created by the undersigned, for the CABR wherein duplicate documents are identified by italicized font.

Madden Industrial Craftsmen is a placement company for tradesman, including carpenters and construction workers. (CABR p.98).

Mr. Buchanan had a consistent work history with Madden, and for the three years prior to his injury on September 3, 2013, he worked exclusively for Madden. (CABR pp. 99-100). Mr. Buchanan was a skilled carpenter. (CABR p. 157). Most of his work assignments were less than a year in duration, and more often 2 to 3 months in length. (CABR p. 98). Most of the work Mr. Buchanan did for Madden was framing. (CABR p. 105).

Industry standards require carpenters to acquire, maintain, and transport the bulk of their own hand tools. (CABR p. 104). Mr. Buchanan used a backpack to transport and store his tools including, but not limited to, extension cords, a framing “gun,” a Sawzall, a Skilsaw, a hammer, and a Cats Paw. (CABR pp. 105-107). He uses an older REI camping backpack with an internal frame. (CABR p. 138). Mr. Buchanan estimated that his backpack, when loaded with tools, weighed between 95 and 105 pounds. (CABR p. 110). There is no dispute that Mr. Buchanan was responsible for his own carpentry tools. (CABR p. 112). There is likewise no dispute that Madden expected its employees to arrive at the jobsite with their tools in order to be ready to work. (CABR p. 133).

Madden billed its customers for the hours worked by the employee-tradesmen it dispatched; in turn, Madden paid itself, or kept back, a portion of each tradesmen's wages as its fee. (CABR p. 160, 162). For the Johnson Brothers job, Madden billed Johnson Brothers \$37.80 per hour for Mr. Buchanan's work; from this, Mr. Buchanan was paid \$21.00 per hour by Madden. (CABR p. 160). For the job scheduled to begin on September 4, 2013, Madden contracted to bill its customer \$39.60 per hour for Mr. Buchanan's work; from this, Mr. Buchanan was to be paid \$22.00 per hour. (CABR p. 162). Both jobs required Madden's employees to provide their own tools and safety equipment, including personal protective equipment, boots, hand tools, Skilsaw, and drill gun. (CABR p. 160, 162).

In September 2013, and for several years prior, Mr. Buchanan did not drive. (CABR p. 107). Instead, he used buses, trains, and/or walked to commute to work and get around the area. (CABR p. 109, 110). Madden was aware of this and it did not present a problem. (CABR p. 135). For most jobs, he left his tools at the worksite overnight if it was secure. (CABR p. 114). Mr. Buchanan's priority was to keep his tools safe. (CABR p. 115). When a site was not adequately secure, Mr. Buchanan would carry his tools with him to and from work each day in his backpack. (CABR p. 111). One

out of every three or four jobs required him to take his tools home with him overnight. (CABR p. 111).

On September 3, 2013, Mr. Buchanan worked as a framer for Madden at the “Johnson Brothers” job located in the Fremont neighborhood of Seattle. (CABR p. 117). He began working on this job in August, 2013. (CABR p. 119). It took him upwards of 2 hours in each direction to travel by bus, train, and foot between his home and the jobsite. (CABR p. 134). The Johnson Brothers jobsite was secure, so Mr. Buchanan left his tools there overnight. (CABR p. 120). When work was completed for the day, tools were stored and locked on the new floor being added to the house; no one accessed the work area, and his tools were safely out of the way of the homeowner and her dog. (CABR p. 121).

September 3, 2013 turned out to be a “short” day of work for Mr. Buchanan because electricians were scheduled to come in to work in the afternoon. (CABR p. 123). Mr. Buchanan’s tasks that morning involved preparing for the electricians and, when he was done, he left the jobsite around noon. (CABR p. 124, 126). Mr. Buchanan did not know it was going to be a short day until he arrived for work that morning. (CABR p. 123).

On his way home, Mr. Buchanan received a call from Johnson Brothers advising him that he did not need to report back to their Fremont job because it was winding down. (CABR p. 128). Consistent with his usual practice, Mr. Buchanan immediately reported the same to Madden. (CABR p. 129). Cindy, a Madden employee, returned Mr. Buchanan's call later on September 3, 2013, to dispatch him to his new work assignment, starting the following morning. (CABR p. 130, 131).

Though Mr. Buchanan observed that the Johnson Brothers job was winding down, until this series of calls, Mr. Buchanan anticipated he would continue to work at that site because there were carpentry tasks still needing to be done, including additional internal framing. (CABR p. 151). Mr. Buchanan would not have left his tools at that jobsite had he known or suspected he would not be returning the following day to work. (CABR p. 115).

Consistent with every assignment and dispatch from Madden, Mr. Buchanan needed his tools for his new job assignment starting the morning of September 4, 2013. (CABR p. 133). He was expected to arrive with his tools and be ready for the job at all times. (CABR p. 133). If a dispatched carpenter showed up for work without his tools, it was

Mr. Buchanan's understanding that, at minimum, he would be sent home from the job; he was unsure whether he would be fired. (CABR p. 115, 116, 133).

In order to be ready to work the following morning, as dispatched by Madden, Mr. Buchanan turned around and travelled back up to the Johnson Brothers site by bus, train, and foot and he arrived around 5:30 or 6:00 in the evening. (CABR p. 135). The jobsite was locked, but the homeowner was there and let him in to retrieve his tools. (CABR p. 135). Mr. Buchanan packed up his tools in his backpack for his trip back home again. (CABR p. 136). The homeowner kindly volunteered to drive him to Westlake Mall in downtown Seattle, and Mr. Buchanan gratefully accepted her offer. (CABR p. 136). Mr. Buchanan then walked to the Sound Link train and rode it to where he caught a bus for his last leg home. (CABR p. 137). Because of the time of day, and the size of his backpack, Mr. Buchanan had to stand on both the train and the bus. (CABR p. 137). The last bus dropped him off about an eighth of a mile from his home; from that bus stop, he walked 5 to 7 minutes towards home. (CABR p. 138).

Mr. Buchanan began feeling pain while transporting his tools that evening, starting when he got off the train and headed towards the bus stop.

(CABR p. 139). The pain developed into feeling a compression and then each step produced a sharp pain which jolted in his hips and spine (CABR p. 139). Mr. Buchanan's back "gave out" and he fell to the ground outside his home. (CABR p. 58, 140). This had never happened before. (CABR p. 142). He stayed on the ground for a couple of minutes, then dragged his tool bag to his room. (CABR p. 141). Mr. Buchanan called a family member and asked for help. He was taken to the hospital for medical treatment the following morning. (CABR p. 142).

Mr. Buchanan called Madden the morning of September 4, 2013, to report the injury. (CABR p. 141).

#### **IV. STANDARD OF REVIEW**

Mr. Buchanan bears the burden of proof to establish his right to receive benefits under the Industrial Insurance Act. *Olympia Brewing Co. v. Dept. of Labor & Indus.*, 34 Wn. 2d 498 (1949). He must prove that the low back injury he suffered on September 3, 2013 occurred within the course of his employment with Madden.

The Washington State Legislature has mandated that Washington courts liberally construe the Industrial Insurance Act in favor of the injured worker. RCW 51.12.010. It is a fundamental principle of the Act

that its purpose is to reduce “to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment.” *Id.* All of the Act’s provisions should be liberally construed with all doubts resolved in favor of the injured worker. *McIndoe v. Dept. of Labor & Indus.*, 144 Wn.2d 252, 26 P.2d 903 (2001); *Dennis v. Dept. of Labor & Indus.*, 109 Wn.2d 467, 745 P.2d 1295 (1987). *Clauson v. Dept. of Labor & Indus.*, 130 Wn.2d 580, 584 (1996). *Crabb v. Dept. of Labor & Indus.*, 181 Wn. App. 648, 326 P.3d 815 (2014). The meaning and intent of “liberal construction” was a subject of discussion in the *Crabb* decision:

The Supreme Court has commanded that this legislative directive requires that we resolve all reasonable doubt in favor of the injured worker. Because *Crabb* makes at least a reasonable case for his entitlement to the higher benefit rate, we must resolve the Department's appeal in his favor, despite the canons of construction invoked by the Department.

*Crabb*, 181 Wn. App. at 658 (emphasis added, citations omitted). The Act must be interpreted by the Court to further, not frustrate, this purpose.

*Bostain v. Food Express*, 159 Wn. 2d 700, 712, 152 P.3d 846, 852 (2007) (interpreting Title 49 RCW, which has a similar liberal construction requirement).

Under the Act, it is the decision of the Superior Court that the

appellate court reviews, utilizing the ordinary standard of review for civil cases. RCW 51.52.140; *Watson v. Dept. of Labor & Indus.*, 133 Wn. App. 903, 909, 138 P.3d 177 (2006). Appellate courts review the Board's record to determine whether substantial evidence supports the trial court's factual findings and then review, *de novo*, whether the trial court's conclusions of law flow from the trial court's findings. *Id.*, 133 Wn. App. at 909, 138 P.3d 177 ; *Ruse v. Dept. of Labor & Indus.* 138 Wn.2d 1, 5-6, 977 P.2d 570 (1999) (quoting *Young v. Dept. of Labor & Indus.*, 81 Wn. App 123, 128, 913 P.2d 402 (1996)).

## V. ARGUMENT

Unless specifically excluded by statute, workers in the state of Washington who are injured at work are entitled to benefits under the provisions of the Industrial Insurance Act. RCW 51.32.010. The Act itself opens with the following declaration of the Legislature: "The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker...and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy..." RCW 51.04.010. In addition to sure and certain relief, the Act is intended to

reduce to a minimum the suffering and economic loss arising from workplace injuries. RCW 51.12.010. The “remedial and beneficial purposes of the Industrial Insurance Act should be liberally construed in favor of workmen and beneficiaries. *Shea v. Dept. of Labor & Indus.*, 1 Wn. App. 547, 552, 463 P.2d 269 (1969).

Washington is one of a few states that rejects the narrower coverage scheme utilized in other states where industrial insurance coverage is provided only if a worker’s injury to “arises out of” their employment. *Ball-Foster Glass Container Co. v. Dept. of Labor & Indus.*, 163 Wash. 2d 133, 141, 177 P.3d 692 (2008). Instead, our legislature created a broader and more comprehensive scope of coverage with our “within the course of employment” requirement. *Id.* While cases must, of course, be decided upon their specific facts, “course of employment” disputes date all the way back to the Act’s earliest years. Our state Supreme Court has commented: “[a]s stated even by the United States Supreme Court, the statutory phrase ‘arising out of and in the course of employment’ which appears in most workmen’s compensation laws is deceptively simple and litigiously prolific.” *Id.*, quoting *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 479, 67 S. Ct 801 (1947). In

Washington State alone, there are many dozens of published decisions which apply our coverage laws to an equal number of factual variations.

Turning specifically to the phrase “acting in the course of employment” it is defined by the Act at RCW 51.08.013(1). It states:

“Acting in the course of employment” means the worker acting at his or her employer’s direction or in the furtherance of his or her employer’s business which shall include time spent going to and from work on the jobsite, as defined in RCW 51.32.015 and 51.36.040, insofar as such time is immediate to the actual time that the worker is engaged in the work process in areas controlled by his or her employer, except the parking area. It is not necessary that at the time an injury is sustained by a worker that he or she is doing the work on which his or her compensation is based or that the event is within the time limits on which industrial insurance or medical aid premiums or assessments are paid.”

When determining if a worker was injured in the course of his or her employment, the analysis requires consideration of whether “the employee was, at the time, engaged in the performance of his duties required of him by his contract of employment, or by specific direction of his employer, or, as sometimes stated, whether he was engaged at the time in the furtherance of the employer’s interest.” *Cochran v. Mahoney*, 129 Wn. App 687, 692, 121 P.3d 747, 750 (2005), citing *Dennis*, 109 Wash.2d at 470, 745 P.2d 1295; see also *Lunz v. Dept. of Labor & Indus.*, 50 Wash.2d 273, 278, 310 P.2d 880, 883 (1957). A worker is in the course of

his or her employment if an injury “arises out of a risk that is sufficiently incidental to the conditions and circumstances of the particular employment.” *Ball-Foster Glass Container Co.*, 163 Wash. 2d at 141, 177 P.3d 692. As far back as 1935, our state Supreme Court admonished that the Act should not be construed too narrowly in “course of employment” cases:

“This court is committed to the doctrine that our Workmen’s Compensation Act should be liberally construed in favor of its beneficiaries. It is a humane law and founded on sound public policy, and is the result of thoughtful, painstaking, and humane considerations, and its beneficent provisions should not be limited or curtailed by narrow construction.”

*MacKay v. Dept. of Labor & Indus.*, 181 Wash 702, 704, 44 P.2d 793, 794-795 (1935), quoting *Hilding v. Dept. of Labor & Indus.*, 162 Wash. 168, 298 P. 321 (1931). Furthermore, in *MacKay*, the court encourages the Department (and now, some 80 years later, the rest of us) not to get too bogged down looking for on point authorities to answer every query or situation: “The want of book authority may be supplied by common-sense consideration of the circumstances of the case.” *Id.* In the same decision, the court holds that an injury:

“Arises ‘out of’ employment, when there is apparent to the rational mind upon consideration of all the circumstances, a causal connection between the conditions under which

the work is required to be performed and the resulting injury. Under this test, if the injury can be seen to have followed as a natural incident of the work and to have been contemplated by a reasonable person familiar with the whole situation as a result of the exposure occasioned by the nature of the employment, then it arises out of the employment.’’

*Id.*, citations omitted.

When determining whether a worker is in the course of his or her employment, the location of injury (whether on or off a specific jobsite) is not the crucial factor in determining a worker’s eligibility for industrial insurance coverage: the more important factor is whether the employee was “in the course of employment” at the time of injury. *Bolden v. Dept. of Transportation*, 95 Wn. App. 218, 974 P.2d 909 (1999). If an employee has a generally identifiable work schedule and jobsite but makes an off-premises journey, the employee remains in the course of his or her employment if the time and trouble of making the journey, or the special inconvenience, hazard, or urgency in making the journey, is substantial enough to be viewed as an integral part of the employee’s service to his or her employer. *Cochran v. Mahoney*, 129 Wn. App. 687, 694, 121 P.3d 747 (2005), citing *Belnap v. The Boeing Company*, 64 Wash. App 212, 222, 823 P.2d 528 (1992).

The plain meaning of RCW 51.08.013(1) eliminates several factors that might otherwise seem relevant when determining whether a specific worker is in the course of his or her employment at the time of an injury. For example, it does not matter whether the injury happens on the employer's premises; it does not matter whether the worker is doing the work for which he or she was hired to perform; and, it does not matter if the injury takes place during the usual schedule of the worker (i.e. the time limits for which premiums/assessments are paid).

On the other hand, a worker is not generally in the course of employment during his or her commute to and from the employer's place of business. *Westinghouse Electric Corp. v. Dept. of Labor & Indus.*, 94 Wn.2d 875, 880, 621 P.2d 147, 150 (1980). This exclusion is most often referred to as the "going and coming" rule. *Id.* Nevertheless, there are several exceptions to this rule which excludes coverage. Two of them are applicable in Mr. Buchanan's case: the "dual purpose" exception, and the "furtherance of employer's interest" exception.

A. When Mr. Buchanan retrieved his tools from the Johnson Brothers site, he did so for the benefit of both himself and his employer.

A worker can be in the course of his employment and furthering his employer's interest while also furthering his own interest. In other words,

there can be a dual purpose or a dual motive for a particular employee's activity; so long as one of those purposes or motives is to benefit the employer, the activity occurs in the course of employment.

Once Mr. Buchanan was dispatched to a new job site in the middle of the afternoon of September 3, 2013, he had no choice but to take a second trip back to Fremont and the Johnson Brothers site to retrieve his tools. Due to the timing of the dispatch from Madden, he had already completed (or nearly completed) his commute home for the day – that is, he had already “gone” to work, and “come” home. Once he received word that he was being dispatched to a new location set to being immediately the next morning and, in order to comply with the expectations of the industry, Madden, and Madden's new customer, Mr. Buchanan was required to get his tools. There can be no question that this second trip was extraordinarily time-consuming, inconvenient, and also urgent. Being prepared with the proper equipment for the following morning's assignment not only made it possible for Mr. Buchanan to earn his own wages, it also made it possible for Madden to make \$17.60 for every hour he worked. His trip back to Fremont was not his usual commute: it was an extra trip mandated by his duties as an employee of Madden.

Examples of the dual purpose exception to the “going and coming” rule date back to the early years of our original Industrial Insurance Act. One of the earliest cases discussing “course of employment” in this context is the case of Mr. W.H. Hobson. *Hobson v. Dept. Labor & Indus.*, 176 Wash. 23, 27 P.2d 1091 (1934). Mr. Hobson was a watchman and general repairman for a logging operation near Aberdeen, Washington. Like Mr. Buchanan, Mr. Hobson was required to provide his own supplies, which for him also specifically included food. *Id.* 176 Wash. at 24, 27 P.3d 1091. The jobsite was located in a camp several miles outside of town. There was a crossing, accessible by a speeder provided by Mr. Hobson’s employer. Employees also used the speeder to pick up food, supplies, and mail at a designated location where the tracks crossed a rural road. On the date of his injury, Mr. Hobson used the speeder to pick up supplies at the crossing. Upon arrival, he discovered that his food had not been delivered as expected due to foul weather. There was no dispute that the only purpose for his trip was to pick up food for his own consumption. Finding no food at the crossing, Mr. Hobson travelled further by foot to purchase eggs. An hour or two later, Mr. Hobson returned to crossing, boarded the speeder and started back towards camp. On this return trip, it crashed and Mr. Hobson later died from his injuries.

The Department denied his widow survivor benefits stating that at the time of the speeder accident, Mr. Hobson was not engaged in the course of his employment, he was not furthering his employer's business, and that his purpose in leaving the camp was for amusement and recreation. *Id.* 176 Wash. 25, 27 P.2d 1091. The state Supreme Court disagreed with the Department and found that Mr. Hobson's employment required him to provide his own supplies; that the trip to the crossing was undertaken for that purpose; that the supplies were necessary for the proper performance of his work; and that he was therefore in the course of employment while returning from the crossing on the speeder. *Id.* 176 Wash. 26, 27 P.2d 1091.

The Court in *Hobson* emphasized that there was no evidence Mr. Hobson took the trip to the crossing on the speeder for any other purpose except to pick up supplies and perhaps pick up mail, if any. The same is true in Mr. Buchanan's case – there is no evidence Mr. Buchanan took his second trip to the Johnson Brothers site on September 3, 2013 for any other purpose than to pick up his tools so he could comply with Madden's new work assignment. There is no evidence he would have taken that extra, inconvenient, and time consuming trip had it not been for the late and unexpected re-assignment to a new jobsite for the following

morning. The evidence is, instead, that he “absolutely” would not have left his tools at the Johnson Brothers site if he knew his work there was done. (CABR p. 115). Like Mr. Hobson’s need for food supplies, Mr. Buchanan needed his tools in order to perform his job – work that was nearly as financially beneficial for Madden as it was for him.

A year after the *Hobson* decision, the state Supreme Court decided another course of employment case involving an injured worker. In *MacKay v. Dept. of Labor & Indus.*, the employer (Le May) was hired by Mason County to build a road. *MacKay*, 181 Wash. at 702, 44 P.2d 793. Le May hired Mr. MacKay to use his own caterpillar to assist with the project. *Id.* Mr. MacKay was paid \$2.00 per hour for his time and the use of his equipment. *Id.* One day, the caterpillar broke a part and was unable to continue. *Id.* Mr. MacKay drove the broken part to the town of Shelton, which was the nearest place where the part could be repaired. *Id.* 181 Wash. at 703, 44 P.2d 793. As Mr. MacKay stepped into the repair shop, he slipped and fell; later, as a result, one of his fingers had to be amputated. *Id.* The Department denied his workers’ compensation claim by concluding that when he stopped the caterpillar and began to repair the part, he started doing work that only he had an interest in. *Id.* The employer, the Department

argued, was only interested in the work done when the claimant was operating his caterpillar, and whenever the caterpillar was out of use, Mr. MacKay's employment and pay were suspended. *Id.* The Court disagreed with the Department and found that the trip to Shelton was necessary to his employment, and so intimately related to it as to lead to the conclusion that he was, indeed, injured in the course of his employment even though he was not actually at work or within actual working hours. *Id.* 181 Wash at 705, 44 P.2ds 793.

Not quite a decade later, *Leary v. Dept of Labor & Indus.* further develops the definition of course of employment for Washington workers in order to give meaning to the founding principles of our Act. 18 Wash. 2d 531, 140 P.2d 292 (1943). Mr. Leary, a gateman, died after suffering from an acute and sudden coronary occlusion while at work; his widow filed a claim for survivor benefits. *Id.* at 533, 140 P.2d at 293. Mr. Leary reported for work as usual to begin his shift the afternoon of November 23, 1941. Soon thereafter, he let a co-worker, Mr. Dunn, out of the gate to get to his car to go home. Mr. Dunn's car battery was empty and would not start the car. Mr. Dunn tried to start the car by rolling it down an incline, but this failed and the car ended up blocking the gate where Mr. Leary was stationed.

Mr. Leary got a co-worker to cover the gate and then retrieved his car and battery cables to help get Mr. Dunn's car started and out of the way of the gate. Mr. Leary was soon seen falling to the ground and never regained consciousness. The Department and later the Joint Board (a predecessor to the Board of Industrial Insurance Appeals), determined that Mr. Leary was not in the course of his employment when he was assisting Mr. Dunn with his car. The trial court agreed. However, the state Supreme Court noted that while Mr. Leary was "undoubtedly" helping his co-worker, he was also in the performance of his duty of keeping the gate clear. *Id.* at 542, 140 P.2d at 297. The Court twice cites the Restatement of the Law of Agency in *Leary* noting:

"The fact that the predominant motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment. If the purpose of serving the master's business actuates the servant to any appreciable extent, the master is subject to liability if the act otherwise is within the service." pp. 530, 531.

And,

"If the master directs a servant to accomplish the result and does not specify the means to be used, the servant is authorized to employ any usual or suitable means." p. 539.

*Id.*

Mr. Buchanan does not dispute that retrieving his tools from the Johnson Brothers site the evening of September 3, 2013, was something he needed to do in order to retrieve his own property. However, the reason he retrieved his tools at that specific time was so he could satisfy his obligations to his employer and his employer's customer. His tools were secure for the night. But for that new assignment, beginning the very next morning at a new and distant location, Mr. Buchanan would not have taken the second trip to retrieve his tools on September 3, 2013. There was a specific urgency created by the timing of Madden's dispatch and, while it is not Madden's fault the dispatch occurred after Mr. Buchanan left the site for the day, there is equally no doubt that there would have been no reason for Mr. Buchanan to undertake another 4-hour round trip journey to retrieve his tools had he not needed them early the next morning to perform work on behalf of his employer. Both Mr. Buchanan and Madden needed him to be properly equipped to work as contracted on September 4, 2013.

Courts in the current century have continued to grapple with the definition and application of when injured workers are in the "course of employment." For example, in the matter of *Cochran v. Mahoney*, this Court found that Mr. Mahoney was in the course of employment while riding his bicycle home after taking an employer-owned vehicle to a nearby

service station. 129 Wash. App. 687, 121 P.3d 747 (2005). Mr. Mahoney, on a day off from his regular work, drove his employer's van to a garage to drop it off for maintenance; he put his personal bicycle in the back to ride home. *Id.* On the way home, he was struck by an automobile and later died from his injuries. *Id.*

The employer presented several theories attempting to prevent Mr. Mahoney and his widow from accessing workers' compensation benefits by arguing he was not in the course of employment when he was biking home from the service station. One of Cochran's arguments was that Mr. Mahoney's ride home was undertaken solely for his own purposes, purportedly for exercise. *Id.* This Court rejected Cochran's various arguments and agreed with the Board's by finding that, among other things, Mr. Mahoney's decision to return home by bicycle served a dual purpose: he was in the process of getting his employer's vehicle serviced, which was a benefit for the employer, and by riding a bicycle home, he may have also personally benefitted by getting some exercise, but that did not exclude him from coverage under the Act. *Id.* There was no evidence Mr. Mahoney would have taken the bike ride in the absence of the errand to service the van. *Id.* The ride home was determined to be in the furtherance of his employer's business in getting a vehicle serviced by an off-the-clock

employee. *Id.* 129 Wn. App. at 699, 121 P.3d 747. Mr. Mahoney's widow was awarded survivor benefits on the basis that Mr. Mahoney was in the course of his employment during his travel home from the service station. *Id.* 129 Wn. App. at 703, 121 P.3d 747.

Like Mr. Mahoney, Mr. Buchanan was off the clock at the time of his back injury on September 3, 2013, but this is immaterial in determining whether a worker is injured in the course of his employment.

Mr. Mahoney's employer required its employees to keep company-owned vehicles in good repair, which is similar to Madden's requirement that their dispatched carpenters have their tools as part and parcel of their employment. Cochran did not specify the time, place or matter for vehicle maintenance; rather, employees knew what the expectation was and Mr. Mahoney complied despite not being given specific instruction to take his assigned van in for service. *Id.* 129 Wn. App at 700, 121 P.2d 747.

Likewise, there was no need for Mr. Buchanan to be directed by Madden to go and retrieve his tools from the Johnson Brothers site on September 3, 2013. Mr. Buchanan knew what was required of him by Madden for the job the following morning so he undertook the second trip back to the jobsite.

There is no doubt that Mr. Buchanan was acting in the furtherance of his employer's business when he returned to the Johnson Brothers site after

his shift on September 3, 2013. As the Court ruled in *Cochran v. Mahoney*, it is immaterial whether the trip back to the jobsite to retrieve his tools also benefitted Mr. Buchanan personally. Had Mr. Buchanan not made a return trip to the jobsite to retrieve his tools on September 3, 2013, he would not have been able to perform the job assigned to him by Madden after he had already completed his shift and left the jobsite for the day.

B. On his second trip to the jobsite on September 3, 2013, Mr. Buchanan was in the furtherance of his employer's business, and therefore in the course of his employment.

Both Mr. Buchanan and Madden were set to profit from his work at the new site beginning the morning of September 4, 2013, which leads to the proper and fair conclusion that he was in the course of his employment at the time of his back injury on September 3, 2013.

The documentary evidence submitted by the Employer in this matter includes two job orders it created when workers were requested by its customers. (CABR p. 160 -- Exhibit 1, to Affidavit of Cindy Littlejohn regarding the Johnson Brothers job; and CABR p. 162 -- Exhibit 3, *Id.* regarding the Faubert job scheduled to begin September 4, 2013). This evidence shows that the "pay rate" for Mr. Buchanan at the Johnson Brothers job was \$21.00 per hour; and the "bill rate" charged by Madden

for Mr. Buchanan's work was \$37.80 per hour. Furthermore, this job order confirms that the job title was "Carpenter" and that "Tools/Safety Equipment" are required as part of the job assignment. The "Specific Job Requirements" for this job are listed as "PPE [personal protective equipment], boots, hand tools, skill saw, drill gun." For the Faubert job, beginning September 4, 2013, the "pay rate" for a carpenter is listed at \$22.00 per hour, and the "bill rate" charged by Madden for Mr. Buchanan's work was \$39.60 per hour. As with the Johnson Brothers job, Faubert also required the carpenter to provide his own "Tools/Safety Equipment" and required exactly the same list of items as Johnson Brothers.

When Mr. Buchanan accepts a job assignment from Madden, Madden bills his hourly rate out significantly higher than the rate it pays him. While working at the Johnson Brothers site, Madden made \$16.80 for every hour Mr. Buchannan worked. For the Faubert job, Madden stood to make \$17.60 for every hour Mr. Buchannan worked. Given the very terms of the work orders, it is clear that Mr. Buchanan would not have been able to work as a carpenter without his tools and therefore both Mr. Buchanan and Madden stood to lose if Mr. Buchanan did not retrieve his tools from the Johnson Brothers site on September 3, 2013. Retrieving

his tools was clearly in furtherance of his employer's business and therefore he was in the course of his employment when he was injured.

The Board of Industrial Insurance Appeals has also contemplated and decided countless course of employment cases since the inception of the Industrial Insurance Act. Pursuant to WAC 263-12-195, the Board designates some of its decisions as "significant," and these decisions carry precedential weight for future Board decisions. Courts accord deference to agency interpretations of the law if the agency has specialized expertise in the issue being decided. *Birrueta v. Dept. of Labor & Indus.* 188 Wn. App 831, 844, 355 P.3d 320 (2015). However, courts are "not bound by an agency's interpretation of a statute." *Id.* quoting *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998).

A Goldendale teacher was found to be in the course of employment when she slipped and fell in a parking lot (despite parking lots generally being excluded by statute as an area covered by the Industrial Insurance Act) while carrying job-related tools into the school. *In re Julie Trusley*, BIIA Dec., 93 3124 (1994). The day prior to her injury, Ms. Trusley decided to carry job-related equipment, described as "manipulative" home in her car rather than returning them to storage at the

school. They were essential tools for Ms. Trusley to perform her job and she needed them the following morning at another school where she worked. The Board noted its history of drawing careful distinctions between workers injured in the course of employment and while “going and coming from work on a jobsite.” In Ms. Trusley’s case, the Board reversed the Department’s decision, and ordered the allowance of Ms. Trusley’s claim, finding that while retrieving her essential tools out of her car, she was acting in the furtherance of her employer’s business. The tools were implements of her job, they were critical “tools of the trade” in her profession, and without them, she was unable to perform her work. The Board concluded that Ms. Trusley was not merely “coming and going” to her jobsite” and since retrieving and carrying her tools were in furtherance of her employer’s business, she was in the course of her employment.

In determining whether a worker’s activity benefits both the employer and the employee, the worker’s motivation and the requirements of the job are the primary areas of focus. In Mr. Buchanan’s case, there is no dispute that in order for him to perform work for Madden as a carpenter on September 4, 2013, he needed his tools – they were essential. There is

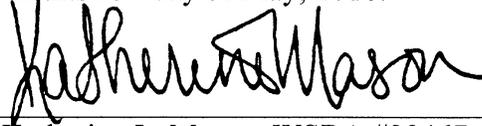
no dispute that Mr. Buchanan was directed by Madden to present for work on September 4, 2013 at a new jobsite. There is no dispute that Mr. Buchanan traveled to the Johnson Brothers site in the late afternoon on September 3, 2013 for the specific and limited purpose of retrieving his tools. There is no dispute he needed his tools of his trade in order to do the work required of him. Without them, Mr. Buchanan would not be able to earn his wages and Madden would not be able to fulfill the job order, bill the customer for Mr. Buchanan's hours, and therefore profit from Mr. Buchanan's work as a carpenter for the job beginning on September 4, 2013.

## **VI. CONCLUSION**

While retrieving his tools from the Johnson Brothers jobsite in the early evening of September 3, 2013, Mr. Buchanan was furthering his employer's business in providing uninterrupted service to Madden's customers. It is immaterial that retrieving the tools also permitted Mr. Buchanan to earn wages. However, he would not have made his second, lengthy and inconvenient return trip to the jobsite except to meet the expectations of his employer. Mr. Buchanan respectfully requests that this Court reverse the Superior Court's decision and hold that, as a matter of law, Mr. Buchanan was in the course of employment at the time of his

low back injury on September 3, 2013, and therefore allow his claim for benefits. With this result, reasonable attorney fees pursuant to RCW 51.52.130, are hereby requested as well.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of May, 2016.

A handwritten signature in black ink, appearing to read "Katherine L. Mason". The signature is written in a cursive style with a horizontal line underneath it.

Katherine L. Mason, WSBA #29467  
Attorney for Appellant Buchanan  
Law Offices of Katherine L. Mason, PLLC  
4711 Aurora Avenue North  
Seattle, WA 98103  
Tel: 206.298.5212

# **Appendix A**

**Table of Contents: Certified Appeal Board Record (CABR)**

Board’s Order Denying Petition for Review ..... 1

Board Administrative File Documents ..... 2

Claimant’s Petition for Review ..... 5

*Duplicate of Claimant’s Petition for Review*..... 13

Board Administrative File Documents ..... 22

Board’s Proposed Decision and Order ..... 25

Board Administrative File Documents ..... 35

Claimant’s Memorandum in Support of Claim Allowance ..... 51

*Duplicate of  
Claimant’s Memorandum in Support of Claim Allowance*..... 64

Board’s Scheduling Order ..... 73

Employer’s Response to Claimant’s Motion for Summary Judgment .. 75

    Exhibit 1: Discovery Deposition of Justin Buchanan..... 90

Department’s Response to Claimant’s Motion for Summary Judgment  
and Cross Motion for Summary Judgment ..... 171

    Exhibit A: *Duplicate of Discovery Deposition of Justin Buchanan* ... 182

Claimant’s Reply Brief ..... 249

*Duplicate of  
Employer’s Response to Claimant’s Motion for Summary Judgment  
(includes Duplicate of Discovery Deposition of Justin Buchanan)* ..... 299

Misfiled Document by Employer ..... 394

*Duplicate Employer Cover Letter*..... 399

Hearing Transcripts (not paginated)

## **Appendix B**

## **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]

Scroll down for order.

**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:**

6  
7             Claimant, Julie A. Trusley, by  
8             Prediletto, Halpin, Scharnikow, Bothwell & Smart, P.S., per  
9             Darrell K. Smart

10  
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

14  
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.**

20  
21  
22   **PROCEDURAL AND EVIDENTIARY MATTERS**

23  
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.

29  
30  
31            The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no  
32 prejudicial error was committed and said rulings are hereby affirmed.

33  
34   **DECISION**

35  
36            Julie A. Trusley, the claimant, was the only witness who testified in this matter. Her  
37 uncontroverted testimony establishes that she was injured in the parking lot of the Goldendale Primary  
38 School when she slipped on ice as she was carrying job-related materials into the school. The only  
39 dispute in this appeal is whether she was acting in the course of her employment when she was  
40 injured. The record establishes that at the time she was injured Ms. Trusley was acting in the course  
41 of employment and her claim should be allowed.  
42  
43  
44  
45  
46  
47

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:  
4

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.  
8

9 So in that sense, it would be like scissors, crayons, chalk, lace-up toys,  
10 balls. Just different things like that.  
11

12 12/22/93 Tr. at 8.  
13

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.  
32  
33  
34  
35  
36  
37  
38  
39  
40

41 In a number of prior decisions we have been called on to determine the applicability of RCW  
42 51.08.013 to situations which may on casual consideration seem to be very similar to Ms. Trusley's.  
43 We declined to provide coverage for a juvenile probation officer who was injured in an automobile  
44 accident on her way home from work. In re Carla A. Strane, Dckt. 90 5175 (March 17, 1992). Even  
45 though work-related files were in Ms. Strane's car at the time of the accident, coverage was denied  
46  
47

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).

7  
8  
9  
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.

17  
18  
19  
20 The parking lot exclusion contained in RCW 51.08.013 is not applicable because Ms. Trusley  
21 was not merely going to work on the jobsite. She was acting in the furtherance of her employer's  
22 business by transporting the implements of her job. Those implements or "manipulatives" were  
23 essential to her work, and without which she evidently could not perform her work. The need to  
24 handle or transport the critical tools of the trade after arriving at the jobsite distinguish Ms. Trusley's  
25 and Kelly cases from the Strane and Armstrong cases.

26  
27  
28  
29  
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 36 37 **FINDINGS OF FACT**

- 38  
39  
40  
41  
42  
43  
44  
45  
46  
47
1. On March 15, 1993, the claimant, Julie A. Trusley, filed an application for benefits with the Department of Labor and Industries alleging that she sustained an injury on February 23, 1993, during the course of her employment with Educational Service District #112. On March 23, 1993, the Department of Labor and Industries issued an order rejecting the claim on the basis that the injury occurred in a parking area and is not covered by the industrial insurance laws in accordance with RCW 51.08.013. On April 9, 1993, the claimant filed a protest to the Department order dated 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.  
6

- 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.  
21

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.  
35

36 It is so ORDERED.  
37

38 Dated this 15th day of August, 1994.  
39

40 BOARD OF INDUSTRIAL INSURANCE APPEALS

41  
42 /s/  
43 S. FREDERICK FELLER Member

44  
45 /s/  
46 FRANK E. FENNERTY, JR. Member  
47

1  
2  
3 **DISSENT**

4 I disagree with the Board majority. I would affirm the order of the Department dated June 17,  
5 1993.  
6

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.  
11

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.  
16  
17

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.  
29  
30

31 Since the claimant was not in the course of her employment while in the employer's parking lot  
32 and her presence there was not beneficial to her employer, this case becomes a simple parking lot  
33 injury and is not covered.  
34  
35

36 Nothing in this record justifies further erosion of the parking lot exception to coverage. Although  
37 one can speculate that the injury was in part somehow related to the "manipulatives" under some  
38 special circumstances theory or rule, the clear and simple fact is this injury occurred in the employer's  
39 parking lot to an employee who was in the same status as any other worker in that parking lot who had  
40 not yet stepped into a course of employment status.  
41  
42  
43  
44  
45  
46  
47

1 The claim was properly rejected and the Department's order should be affirmed.

2  
3 Dated this 15th day of August, 1994.

4 /s/  
5 ROBERT L. McCALLISTER Member  
6

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47