
In the Matter of the Compensation of
WILLIAM R. BEAUDRY, II, Claimant
WCB Case No. 14-01240
ORDER ON REVIEW
Stebbins & Coffey, Claimant Attorneys
SAIF Legal Salem, Defense Attorneys

Reviewing Panel: Members Johnson and Lanning.

Claimant requests review of Administrative Law Judge (ALJ) Smith's order that upheld the SAIF Corporation's denial of claimant's death benefits claim. On review, the issue is course and scope of employment.¹

We adopt and affirm the ALJ's order, except we do not adopt the "Personal Pleasure Defense" discussion on pages 5 through 7. We also do not adopt the fourth full paragraph on page 10. In addition, we offer the following supplementation regarding: (1) claimant's contention that SAIF did not timely raise the "social/recreational" defense under ORS 656.005(7)(b)(B); and (2) claimant's reliance on *Sosnoski v. SAIF*, 184 Or App 88, *rev den*, 335 Or 114 (2002), *Slaughter v. SAIF*, 60 Or App 610 (1982), and *Bruce Hohensee*, 56 Van Natta 1847 (2004), *aff'd without opinion*, 200 Or App 733 (2005), in support of compensability under the "traveling employee" doctrine.

On November 18, 2013, the decedent suffered fatal injuries while riding as a passenger in an employer-owned truck driven by a coworker that was involved in a motor vehicle accident (MVA) on U.S. Highway 20 near Eddyville, Oregon. (Ex. 3-1). The MVA occurred after the decedent's work shift had ended as he and the coworker were traveling back to their hotel after visiting a gun store in Philomath, Oregon, 46 miles away from the job site.

On March 6, 2014, SAIF denied compensability of the decedent's fatal injury, alleging that it did not arise out of or occur within the course of employment. (Ex. 6). Claimant requested a hearing.

In setting aside SAIF's denial, the ALJ reasoned that, although the decedent's injury was not excluded from compensability under ORS 656.005(7)(b)(B) (which addresses injuries occurring while engaging in recreational or social activities primarily for the worker's personal pleasure), it

¹ Claimant, Sarah Beaudry, is the surviving spouse of the deceased worker.

did not arise out of and in the course of his employment. Specifically, the ALJ determined that the decedent was a traveling employee who was injured while engaged in a distinct departure on a personal errand.

On review, claimant contends that SAIF did not timely raise the “social/recreational” defense of ORS 656.005(7)(b)(B). In addition, claimant argues that the record establishes that the decedent’s injury arose out of and in the course of employment under the “traveling employee” doctrine.² Among other cases already addressed in the ALJ’s order,³ claimant relies on *Sosnoski*, *Slaughter* and *Hohensee*.

First, in response to claimant’s argument regarding the timeliness of SAIF’s ORS 656.005(7)(b)(B) defense, we are inclined to find that such a defense was not timely raised either in its denial or on the record at hearing. Nonetheless, we need not conclusively resolve this issue because we find that the decedent’s injury did not arise out of and in the course of his employment. We reason as follows.

Claimant relies on *Sosnoski*, *Slaughter* and *Hohensee* in support of compensability of the claim under the “traveling employee” doctrine. For the following reasons, we find those cases distinguishable.

In *Hohensee*, we held that the claimant’s MVA while he was traveling between his “satellite” office and a “home” office was in the course and scope of employment. In that case, the claimant had a “home” office for which the employer provided office supplies, a company car, and fuel and mileage to and from his “home” office and his “satellite” office. Finding that the claimant was driving his employer’s vehicle between the two offices when he was injured, we reasoned in *Hohensee* that the claimant’s injury was sufficiently connected to work to be compensable. Here, in contrast, the decedent was not traveling between two work locations when injured, and there was no reason for the employer to expect him to be traveling to or from a gun shop.

In *Slaughter*, the court held that the claimant’s injury was compensable because it occurred during a reasonable activity while he was passing time at a tavern and arose out of the necessity “to kill time” during a forced layover. 60 Or App at 616. The court reasoned that the trip was minimal in both time and space, and did not amount to a distinct departure.

² Because we find this doctrine determinative, we do not address claimant’s other theories of compensability.

³ Because we agree with the ALJ’s analysis of these cases, we do not address their application further on review.

In contrast, in the current case, the decedent was injured almost two hours after his shift had ended and after he had visited a gun store 46 miles away from his work location. We do not find the decedent's situation similar to "passing time" during a forced layover between work-related activities. Thus, *Slaughter* is distinguishable.

Finally, contrary to claimant's argument, *Sosnoski* does not stand for the proposition that the act of driving back to a location the employer expects a worker to be is sufficient, in and of itself, to bring the worker within the course and scope of his employment. In *Sosnoski*, at the time the claimant was injured, he had picked up his rental car and was driving back to his hotel, following a coworker. The claimant was a reasonable distance from the hotel and was not under the influence of intoxicants. He had no personal objective in mind. The court concluded that such an activity was one that the employer could reasonably have expected of a traveling employee. According to the court, it did not matter whether the claimant had *earlier* departed from his employment on a distinctly personal errand; that departure ended when the claimant's activities again became reasonably related to his status as a traveling employee and not inconsistent with the business trip's purpose or the employer's directive.

Here, the decedent's trip to the gun store was a departure from his employment on a distinctly personal errand.⁴ In contrast to *Sosnoski*, he was still engaged in that departure when injured; *i.e.*, that "departure" had not ended, and he was not engaged in a different act (*e.g.*, picking up a rental car and driving back to a hotel) that could have subsequently returned him to within the scope of an employment-related travel purpose.

Accordingly, for the reasons discussed by the ALJ's order and as supplemented herein, we conclude that the decedent was injured while engaged in a distinct departure on a personal errand. Consequently, the decedent's injury is not compensable under the "traveling employee" doctrine. Therefore, we affirm.

ORDER

The ALJ's order dated September 19, 2014 is affirmed.

Entered at Salem, Oregon on April 29, 2015

⁴ We acknowledge that, under the employer's policy, the decedent's 92-mile round trip in the employer's vehicle came within the "minimal use" provision, which allowed for such use without prior approval, as well as the employer's payment for gas. (Tr. 11-12; Ex. 2-3). Nevertheless, such circumstances do not alter the fundamental premise that the decedent's trip was entirely personal in nature and bore no relationship to his work responsibilities or travel status.