

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

In the Matter of:

CHARLES ANTHONY SOLECKI,

Decedent,

JENNIFER SOLECKI,

Claimant,

v.

BECHTEL MARINE PROPULSION
CORPORATION,

Employer,

and

EMPLOYERS INSURANCE COMPANY OF
WAUSAU,

Surety,

Defendants.

IC 2012-003771

**FINDINGS OF FACT,
CONCLUSION OF LAW,
AND RECOMMENDATION**

Filed November 8, 2013

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Pocatello on May 8, 2013. Claimant, Jennifer Solecki, was present and represented by her attorney, Javier Gabiola, of Pocatello. David P. Gardner, also of Pocatello, represented Employer and its Surety. Oral and documentary evidence was presented. No post-hearing depositions were taken. The parties submitted post-hearing briefs and this matter came under advisement on August 23, 2013.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 1

ISSUE

The sole issue to be decided as the result of the hearing is whether Claimant's husband's (Decedent's) untimely death arose out of and in the course of his employment with Employer, or whether the "going and coming" and "traveling employee" exceptions allows recovery.

CONTENTION OF THE PARTIES

Claimant contends that Decedent's death in a motor vehicle accident entitles her to death benefits, as Decedent was acting within the course and scope of his employment when he lost control of the vehicle he was driving. Decedent was returning to his home in Chubbuck from the INL site northwest of Idaho Falls when he crashed his vehicle into an abutment under an overpass still within the perimeter of the INL facility. Claimant contends that he was on a special errand or, in the alternative, was a traveling employee and is, therefore, exempt from the going and coming rule.

Defendants respond that Claimant was returning home from work at his usual place of employment when he crashed. He chose the vehicle he drove, the route he took and the speed he drove; Employer had no choice in these matters. He was not paid for travel time and his activities on December 20, 2011 fall squarely within the parameters of the going and coming rule that serves to bar this claim.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Decedent's widow, Jennifer Solecki (Claimant), and Josh Scheffler (Scheffler), Deputy Manager of Lifting and Handling Operation for Employer (Employer).
2. Claimant's Exhibits 1-10, admitted at the hearing.

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3. Defendants' Exhibits 1-4, admitted at the hearing.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Decedent and Claimant were married on September 9, 2001. *See*, Claimant's Exhibit 1. They are the parents of Kylee Lenae (date of birth March 30, 2005) and Kaden Anthony (date of birth July 29, 2009). *See*, Claimant's Exhibits 2 and 3.

2. On the date of his death (December 20, 2011) at age 34, Decedent was employed at Bechtel Marine Propulsion Corp. (Bechtel) as a Shift Refueling Engineer (SRE) at its facility at the Idaho National Laboratory (INL) northwest of Idaho Falls. Joshua Scheffler, an Assistant Chief Refueling Engineer at Bechtel's in December 2011 testified at hearing regarding Bechtel's role at the INL:

Q. (By Mr. Gardner): Tell us a little bit about the NRF Facility¹ and what Bechtel Marine Propulsion does there.

A. The NRF, for the most part, takes the naval reactor fuel from boats and vessels in the Navy.

The fuel is processed and basically gets it ready for disposal.

They also have some exams-type work that they do where some of the examination material goes in new reactor core designs.

Q. And the NRF Facility is located where?

A. It's out on the INL property.

Q. And are there other contractors who operate facilities out on the INL property?

A. Yes.

Q. and does - - and so the NRF Facility operated by Bechtel is just one of several facilities out there being operated?

A. Correct.

¹ Naval Reactors Facility.

Hearing Transcript, pp. 60-61.

3. Mr. Scheffler testified that Decedent was a dependable employee with a lot of qualifications and was familiar with all of the work he performed.

4. On December 20, 2011, Decedent was scheduled to work. He generally took the INL bus from his home in Chubbuck out to the INL site. However, on that date, Decedent missed the bus as he was up late assembling bar stools and, according to Claimant, was not feeling well. Claimant testified that Decedent told her that he was feeling sick and would not be going to work that day. She further testified that Mr. Scheffler called Decedent, and her understanding of the conversation was as follows:

Q. (By Mr. Gabiola): And tell the Referee what your knowledge is regarding that (the call from Mr. Scheffler):

A. I was just hearing Chuck's (Decedent's) side of the call, but I assume - -

I had talked to Chuck earlier and asked if he got ahold of Josh (Mr. Scheffler) yet and he hadn't.

And so I assumed Josh was calling to see where he was at. And Chuck told him that he was going to stay home because he was sick and - -

Q. When you say "Chuck told him," Chuck told Josh Scheffler that?

A. Yes. And he just kind of - - They kind of engaged in a conversation. Chuck was just saying, you know, okay, okay.

When they hung up Chuck said, well, I guess I've got to go in.

And I kind of argued with him saying that - - like, you can do it later or whatever. Like, he's sick, he didn't sleep good, that whole thing. I had made him sleep on the couch and so he didn't get good rest.

But he was committed to his job and to Josh. They were personal friends.

And so if Josh needed him, Chuck wouldn't have let him down.

Hearing Transcript, pp. 23-24.

5. According to Claimant, while Decedent missed little work due to being sick, Bechtel had unlimited sick leave. She also testified that Bechtel was short-staffed due to

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 4

the Christmas holidays. Claimant believes she must have told the investigating police officers following Decedent's accident that he was sick that morning and had not intended to go work; she does not know why that information is not contained within any of their reports.

6. Mr. Scheffler testified that Claimant worked the shift before the date of his fatal accident and did not indicate to him that he was feeling ill. Decedent was regularly scheduled to work on December 20, 2011, and was to report in at 6:45 a.m. When Mr. Scheffler finished his early morning routine, he noticed that Decedent was not there and so he called him to find out why he was not.

7. Mr. Scheffler's recollection of his call to Decedent is somewhat different than Claimant's:

I called Mr. Solecki and he mentioned to me that he had been up later that night working on his basement, that he had slept in and that he would be coming out to work. He'd be driving himself out to work.

Q. (By Mr. Gardner): Did he say anything to you about being sick?

A. No.

Q. When he said he would be driving out to work, did he say how he was going to get there?

A. Can you rephrase that?

Q. Yeah. When he said he was going to be driving out to work, did he tell you how he'd get there?

A. No.

Q. If Charles had told you that he had been sick, what would you have told him to do?

A. At that time our medical time off policy didn't have any restrictions on time off for medical reasons.

Employees are encouraged to not come out when they were sick because it spreads sickness to other workers.

So, I would have allowed him to stay home.

Hearing Transcript, p. 66.

8. Mr. Scheffler spoke with Decedent at around 10:45 in the morning on December 20, 2011, after Decedent started his shift. Decedent did not inform Mr. Scheffler that he was sick. However, on cross-examination, Mr. Scheffler admitted that in his deposition he testified that he did not recall whether Decedent told him that he was sick, but he did recall that Decedent informed him that he had stayed up late the night before and had slept in. Mr. Scheffler did not tell Decedent he had to come to work the morning of December 20th.

9. On December 20, 2011, while on his way home from the INL site, Decedent crashed his pickup into a concrete abutment under an overpass and was killed as the result of blunt force trauma to his chest and abdomen, as well as a severed spinal cord. The Idaho State Police accident reconstruction indicates that Decedent simply drifted off the roadway and struck the overpass face, causing his pickup to burst into flames.

DISCUSSION AND FURTHER FINDINGS

Special errand

As a general rule, accidents happening while an employee is traveling to and from work are not considered to have arisen out of and in the course of a claimant's employment and are not compensable. See, *Cheung v. Wasatch Electric*, 136 Idaho 895, 42 P. 3d 688 (2002). It is Claimant's burden to show by a preponderance of the evidence that Decedent's accident arose out of and in the course of employment. *Id.* One exception to the going and coming rule is the "special errand" doctrine:

Where an employee, although not at her regular place of business, even before or after customary work hours is doing some special service or errand or the discharge of some duty of or under the direction of her employer, an injury arising en route to or from the place of performance of the work is considered arising out of and in the course of employment.

Trapp v. Sagle Volunteer Fire Department, 122 Idaho 655, 837 P.2d 781 (1992) fn. 1.

The Commission in *Trapp* borrowed from an Arizona Supreme Court case, *Johnson Stewart Mining Co., Inc., v. Industrial Commission*, 133 Ariz. 424, 652 P.2d 163 (1982), in arriving at five factors to be considered and weighed in evaluating cases under the special errand doctrine : 1) Did the activity enure to the benefit of employer? 2) Was the activity engaged in with the permission or at the discretion of the employer? 3) Did the employer knowingly furnish the instrumentalities by which the activity was to be carried out? 4) Could the employee reasonably expect compensation or reimbursement for the activity engaged in? 5) Was the activity primarily for the personal enjoyment of the employee? *Id.*, fn. 2.

10. Here, Decedent was not on any special errand for Employer; he was simply driving home after working his regularly scheduled shift. Whether or not Decedent was “forced” to go to work when he was sick is irrelevant. Assuming without deciding that was the case, Decedent apparently worked his shift without incident and was on his way home from that shift. To adopt Claimant’s position would entirely scuttle the going and coming rule. All employers derive a benefit from an employee’s being at work and most employees must drive to and from that work. To label that travel a “special errand” because employers derive a benefit from that travel would make all such travel arising out of and in the course of employment.

Traveling employee

11. Claimant contends that Decedent was a traveling employee. This exception applies when an employee’s work requires him or her to travel away from the employer’s place of business or his normal place of work. See *Cheung*, supra, citing *Ridgway v. Combined Ins. Cos. of America*, 98 Idaho 410, 556 P. 2d 1367 (1977). Here, Decedent’s place of employment never changed. He was not traveling between two places of work as

was the employee in *Cheung*. To find that Decedent was a traveling employee would eviscerate the going and coming rule. All employees are required to arrive at his or her work site and leave when their day's work is done. Decedent was not a traveling employee.

12. The Referee finds that Claimant has failed to prove that Decedent's death was the result of an accident arising out of and in the course of his employment.

CONCLUSION OF LAW

Claimant has failed to prove that Decedent's death was caused by an accident arising out of and in the course of his employment.

RECOMMENDATION

Based upon the foregoing Findings of Fact, Conclusion of Law, and Recommendation, the Referee recommends that the Commission adopt such findings and conclusions as its own and issue an appropriate final order.

DATED this __6th__ day of November, 2013.

INDUSTRIAL COMMISSION

_____/s/_____
Michael E. Powers, Referee

CERTIFICATE OF SERVICE

I hereby certify that on the __8th__ day of __November__, 2013, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

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Gina Espinosa

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IC 2012-003771

ORDER

Filed November 8, 2013

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusion of law, to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant has failed to prove that Decedent's death was caused by an accident arising out of and in the course of his employment.

ORDER - 1

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this __8th__ day of __November__, 2013.

INDUSTRIAL COMMISSION

____/s/_____
Thomas P. Baskin, Chairman

____/s/_____
R. D. Maynard, Commissioner

____/s/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

____/s/_____
Assistant Commission Secretary

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I hereby certify that on the __8th__ day of __November__ 2013, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

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____/s/_____