Personal responsibility, abandonment of employment and the intoxicated worker

By Michael H. Weier • April 11, 2014

Rudolph Knight v. Dep't of Labor & Industries, 181 Wash. App. 788 (2014).

Washington State adheres to the axiom that its workers' compensation system provides coverage to a worker injured in the course of employments without consideration of fault.[1] On occasion the "no-fault" system seems to trivialize personal responsibility. The recent decision of the Washington State Court of Appeals[2], however, is a refreshing reminder that claimants under the Industrial Insurance Act[3] do have at least a modicum of responsibility for their own personal well-being.

Rudolph Knight, a catastrophic claims adjuster for an insurance company, filed a claim for a brain injury sustained during out-of-state assignment. Mr. Knight (the claimant) travelled from his Seattle office to Galvenston, Texas, to assess damage in the aftermath of Hurricane Ike. The claimant spent Thanksgiving weekend with family, then returned to Texas a day early, reportedly to get "back into the frame of mind of dealing with that specific situation."

While driving to his hotel, the claimant pulled his car onto a beach to watch some men riding dune buggies. The claimant recalled nothing else until 24 hours later when visited in the hospital by his wife.

Paramedics responded to a 911 call and found the claimant on his back, in the surf, and mumbling "help me." The lead paramedic noted small lacerations and bruises, and treated the claimant with fluid for hypothermia and intoxication. Though the claimant denied drug use, he told the paramedic that he "had a lot of alcohol to drink." The claimant also said the last thing he recalled was getting tired and passing out on the beach.

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A police offer at the scene and a physician at the emergency room noted that the claimant smelled of alcohol. Based upon the claimant's action, slurred speech, sleepiness, and smell of his breath, the ER physician diagnosed alcohol intoxication. A brain CT scan revealed a subarachnoid hemorrhage and clinical testing indicated the claimant suffered a contrecoup injury – blunt head trauma that caused the brain to "slosh" and strike against the opposite side of the skull. The ER physician determined the claimant's injuries were consistent with a fall onto sand and impact upon the head, but speculated it could also be caused by

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Personal responsibility...and the intoxicated worker (continued)

an assault.

The Department of Labor and Industries denied the claimant's application for workers' compensation benefits. On appeal, the Board of Industrial Insurance Appeals affirmed claim denial, finding that the evidence established the claimant suffered a head injury because he became intoxicated, effectively left the course of employment, collapsed on the beach and struck his head on the sand. The claimant appealed to the Superior Court, which granted the Department summary judgment and affirmed claim denial.

On further appeal, the Court of Appeals found no issue of material fact for a jury to decide and affirmed the decision of the Superior Court. In its decision, the Court of Appeals acknowledged a long line of cases holding claimants of workers' compensation benefits are held to strict proof of an injury in the course of employment.[4] Moreover, the Court declared a traveling employee has the burden to show he was not on a distinct departure from employment duties at the time of injury.[5] The Court ultimately determined the claimant failed in his burden to prove entitlement to benefits because he presented insufficient evidence to show he was in the course of employment at the time of injury.

A worker traveling on company business is "generally considered to be in the course of employment continuously during the entire trip, except during a distinct departure on a personal errand."[6] Claims for which a worker is intoxicated at the time of the injury, however, pose a unique problem when addressing compensability under the Act.

A worker's intoxication is generally not relevant to a determination of compensability and coverage under the Act, unless the intoxication results in abandonment of employment at the time of injury.[7] The evidence indicated the claimant became so intoxicated that he "passed out" and thereby effectively abandoned his employment. Absent evidence to the contrary, claimant was not in the course of employment when, in a stupefied or unconscious state, he fell and struck his head against the sand.

The decision of the Court of Appeals acknowledges intoxication that contributes to injury during employment is compensable, unless the intoxication causes the worker to lose conscious awareness and become incapable of performing the duties of the job. More importantly, the Court's decision recognizes the 'no fault" system of the state's workers' compensation system does have a limit. Workers do have some responsibility for their own personal injury as a result of their consumption of alcohol.

If you have any questions regarding this or any other workers' compensation

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matter, please contact one of our attorneys. ■

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* The Court of Appeals issued its initial opinion on April 7, 2014. Following Motions for Reconsideration, on June 16, 2014 the Court withdrew its initial opinion and issued a substitute Opinion that corrected typographical errors. The Court's opinions are otherwise identical.

[1] RCW 51.04.010.

[2] *Rudolph Knight v. Dep't of Labor & Industries,* 181 Wash. App. 788 (2014).

[3] Title 51 of the Revised Code of Washington.

[4] *Knight* at page 7, citing *Cyr v. Department*, 47 Wn.2d 92, 97, 286 P.2d 1038 (1955) (quoting *Olympia Brewing Co. v. Department*, 34 Wn. 2d 498, 505 208 P.2 1181 (1949); *DeHaas v. Cascade Frozen Foods*, 23 Wn. 2d 754, 759, 162 P.ed 284 (1945); *Clausen v. Department*, 15 Wn.2d 62,68, 129 P.2d 777 (1942).

[5] Id at page 11, citing *Superior Asphalt & Concrete Co. v. Department*, 19 Wn. App 800, 804 578 P. 2d 59 (1978) (A claimant has the burden to prove entitlement to benefits and establish a frolic ended at the time of injury.)

[6] Id. at page 7, citing *Ball-Foster Glass Container Co. v. Giovanelli*, 163 Wn.2d 133, 142, 177 P.3d 692 (2008).

[7] *In Re: Michael Pate* (Dec'd), BIIA Dec. 97 1977 (1999) (Evidence of the worker's tolerance for alcohol and demeanor, behavior and speech immediately prior to the accident, or eyewitness testimony of erratic driving, is sufficient to establish that the worker abandoned the course of employment by reason of intoxication.); *In Re: Brian Kozeni* (Dec'd), BIIA Dec. 63,062 (1983) (Intoxication evidenced by a blood alcohol content of 0.16 did not remove the worker from the course of employment where the worker had an above average alcohol tolerance; normal demeanor, behavior and speech; was "fully about his wits"; and had his job duties uppermost in his mind.) *In Re: Austin Prentice*, BIIA Dec.50,892 (1979) (Intoxication evidenced by a blood alcohol content of .24 did not remove the worker from the course of employment where the worker had an above average tolerance for alcohol, was described as "sober and normal," and was still able to perform his work duties.); and *In Re: Al Thurlow* (Dec'd), BIIA Dec. 20,254 (1967) (A watch guard with a blood alcohol content of 0.29 was held to have abandoned the course of his employment, fell into a body of water and drown, where medical testimony indicated that such a high level of blood alcohol causes marked impairment in all people and lay testimony indicated that prior to the fatal injury the worker's "walk was not normal, ... he seemed to weave, his actions seemed different, and he did not respond to the usual 'hello'.")

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