Narrowing the scope of Oregon traveling employee coverage in *Beaudry v. SAIF*

By Kelsey H. Fleharty ■ February 6, 2018

The recent Oregon Court of Appeals' decision in *Beaudry v. SAIF*[1] represents a welcome departure from the broad coverage given in past court decisions to traveling employees engaged in personal activities. In *Beaudry*, the court upheld the Board's determination that claimant was on a distinctly personal errand at the time of his death, thus severing the connection to employment. The facts are as follows.

At the time of incident, claimant, who lived in Coos Bay, Oregon, was working on a project in Newport, Oregon. The employer reimbursed hotel accommodations and notably offered company vehicles for personal use. The employer also covered the gasoline expenses for trips under 100 miles. At the end of his shift on November 18, 2013, claimant agreed to travel to Philomath, Oregon, with a coworker to select a Christmas gift for the coworker's wife. On the way back to Newport, claimant's coworker crossed the center line of the highway resulting in a head-on collision. Claimant was pronounced dead at the scene, approximately 20 miles away from the jobsite. Claimant's wife filed a claim as the surviving spouse.

The employer denied the claim on the basis that claimant's trip to Philomath constituted a distinct departure on a personal errand that was not reasonably related to claimant's traveling employee status. The Board and the court agreed with the employer and carefully distinguished several prior cases that awarded coverage under similar fact patterns. In particular, the Board and court declined to directly follow the precedent of *Sosnoski v. SAIF*,[2] a challenging prior decision with unsettling facts from an employer perspective.

In *Sosnoski*, a traveling employee was arrested for driving under the influence and held in jail overnight. The following day, claimant was driving to the impound lot to retrieve his vehicle when he was injured in a motor vehicle accident. The court found that claimant reentered the scope of employment when he left the impound lot to drive back to his hotel.

Any evaluation of whether a traveling employee distinctly departed from the course of employment remains a challenging multifactorial analysis

The court also thoroughly distinguished the precedent of *Proctor v. SAIF*.[3] In that case, a traveling employee was staying in a town approximately twenty miles away from his home for the purposes of a work conference. He decided to drive to his home gym for a game of pick-up basketball and subsequently tore his Achilles tendon. The injury was found to be compensable as the court

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Narrowing the scope of the Oregon traveling employee (continued)

determined that the purpose of the trip to the home gym was to relieve the stress of the conference; thus, the side trip was not a distinct departure and did not remove claimant from the course of employment.

Given the outcomes of *Sosnoski*, *Proctor* and several other decisions that broadly construed traveling employee coverage, the *Beaudry* decision represents a valuable new tool in assessing traveling employee claims. In *Beaudry*, as in the prior decisions, the court began its analysis with the understanding that a traveling employee is continuously within the course and scope of employment while traveling, except when it is shown that the worker has engaged in a "distinct departure on a personal errand."[4] However, in *Beaudry*, the court agreed with the employer's contention that, although certain activities of a personal nature are considered to be within the course of employment, the activity still must bear some reasonable relationship to the worker's status as a traveling employee. The court found that the purpose of traveling close to 50 miles to select a gift for a coworker's wife was not reasonably connected to claimant's traveling employee status.

The outcome of *Beaudry* is especially surprising for several reasons. First, based upon the precedent of *Sosnoski*, one could reasonably expect the court to conclude that claimant reentered the scope of employment when he and his coworker left the mall and departed on their return trip. However, the court did not address this consideration in any extensive detail and merely noted that the fact that claimant was on the return portion of the trip did not convert the distinct departure into an activity reasonably related to traveling employee status.

Second, and of particular importance, was the lack of weight given to the expressed employer permission for personal travel, or to the transportation and gasoline reimbursement. The court specifically noted that the fact that an employer permits an activity does not mean that the activity is compensably related to the employee's traveling status. This finding, in particular, distinguishes the prior precedent of Proctor, which placed significant importance upon the fact that the employer had encouraged recreation.

This finding also clearly distinguishes the precedent of another prior traveling employee case, *SAIF Corp. v. Scardi*,[5] in which the court noted that: "If the activity is one that an employer might reasonably approve of or contemplate that a traveling employee will engage in, and the activity is not inconsistent with the travel's purpose or the employer's directives, it is not a distinct departure."[6] In *Beaudry*, the employer clearly contemplated that its traveling employees may travel for personal reasons and even provided transportation. However, the appearance of employer approval of the activity was deemed inconsequential given the distinct departure from the course of employment.

Any evaluation of whether a traveling employee distinctly departed from the

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course of employment remains a challenging multifactorial analysis. That said, the recent *Beaudry* decision (which is now final) supports an argument that a distinct departure for personal reasons (i.e. a distant shopping trip, hiking expedition, etc.) should reasonably sever any connection to employment, even if the employer tacitly endorsed the activity in question.

You won't need to travel to find a Reinisch Wilson Weier PC attorney who can help you untangle traveling employee issues or answer other claim-related questions. ■

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[1] *Beaudry v. SAIF Corp*., 288 Or App 139 (2017)

[2] *Sosnoski v. SAIF Corp.*, 184 Or App 88 (2002)

[3] *Proctor v. SAIF Corp*., 123 Or App 326 (1993)

[4] *Beaudry*, 288 Or App at 143 (citing *SAIF Corp. v. Scardi*, 218 Or App 403 (2008)

[5] *SAIF Corp. v. Scardi*, 218 Or App 403 (2008)

[6] *Id.*

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