

BRB No. 87-2285

DORIS JEAN HOKE)	
(Widow of TRUBY LEE HOKE))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TODD SHIPYARDS CORPORATION)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order of James J. Butler, Administrative Law Judge, United States Department of Labor.

William H. Shibley, Long Beach, California, for the claimant.

Daniel F. Valenzuela (Samuelson, Coalwell & Gonzalez), San Pedro, California, for the self-insured employer.

Before: SMITH and McGRANERY, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimant, widow of decedent, appeals the Decision and Order (85-LHC-1908) of Administrative Law Judge James J. Butler denying benefits on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Decedent was shot and killed on June 2, 1982 at approximately 5:00 p.m. while fixing a tire on his van in employer's parking lot. Decedent punched out of work at 4:00 p.m. that day, and proceeded out of employer's guarded premises to a parking lot located 400 to 500 yards away where he had parked his van that morning. Decedent discovered a flat tire on

*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

his van, which he was in the process of repairing at the time of the shooting. Claimant filed this claim for death benefits, contending decedent's death arose out of and in the course of his employment.

In his Decision and Order, the administrative law judge found claimant was entitled to the Section 20(a), 33 U.S.C. §920(a), presumption that decedent's death was work-related. The administrative law judge then found that employer rebutted the presumption. The administrative law judge stated that an hour had elapsed between the time decedent left work and the shooting, which exceeded the reasonable margins of time and space necessary to pass to and from the place of work. The administrative law judge applied the "coming and going rule," stating that because decedent left the guarded portion of employer's premises for the day, he was going home at the time of the murder. In addition, the administrative law judge rejected claimant's argument that the parking lot in which decedent was killed was a zone of special danger which exposed him to the risk of assault. Lastly, the administrative law judge, relying on the official police account of the incident, concluded that the motive for the shooting was robbery, and that there was no other evidence of record to indicate that the attack on decedent was related to his employment, assuming, *arguendo*, that the shooting occurred during the course of employment. The administrative law judge therefore concluded that decedent's death did not arise out of or in the course of his employment, and he denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding decedent's death did not arise out of and in the course of his employment. Claimant contends that the administrative law judge erred in stating that decedent was not on employer's premises and that his activities were personal. Claimant contends that, as a general rule, employees are allowed a reasonable amount of time after work to leave the premises before the coming and going rule applies, and that because decedent was changing a tire this time period was extended. Claimant also contends that employer presented no evidence that the shooting did not arise out of decedent's employment since the reason for the shooting is unknown. Employer responds to this appeal, urging affirmance.

In order for an injury to be considered in the course of employment, the injury must be shown to have occurred within the time and space boundaries of the employment and in the course of an activity whose purpose is related to the employment. *See Willis v. Titan Contractors, Inc.*, 20 BRBS 11 (1987). An employee's activities on the business premises generally are covered for compensation purposes. *See Alston v. Safeway Stores, Inc.*, 19 BRBS 86 (1986). Employer's parking lot is considered part of its premises. *Id.* at 88 n. 1. In addition, the general rule is that employees are allowed a reasonable amount of time after work to leave the premises before the "coming and going rule" applies. *Id.* Injuries sustained by employees on their way to or from work generally are not compensable, as traveling to and from work is not within the scope of an employee's employment. *See Sawyer v. Tideland Welding Service*, 16 BRBS 344 (1984).

In the instant case, the administrative law judge found that once decedent punched his time

card at 4:00 p.m. and left the guarded portion of employer's premises, his activities became personal. The administrative law judge noted that decedent had been separated from the workplace for one hour at the time of his death and that his compensation manager testified employer had no control over his activities after he punched out. *See* Tr. at 26. Based on these factors, the administrative law judge concluded that decedent was on his way home at the time he was shot.¹ This conclusion is erroneous as a matter of law, because the evidence is uncontradicted that the parking lot where decedent was killed is employer's lot for the use of its employees. Tr. at 26-27. Thus, the record reflects that decedent's death took place within the space boundaries of his employment. *Alston*, 19 BRBS at 88 n. 1.

Moreover, it is arguable that the time boundaries of employment were extended in this case because decedent was fixing a flat tire on his van, and it was reasonable for him to be in the parking lot one hour after leaving work. The administrative law judge found that decedent exceeded reasonable boundaries of time because an hour had elapsed between the time decedent left work and the shooting. The administrative law judge thus concluded that the "coming and going rule" applied and that decedent was not in the course of his employment.

We need not determine if the administrative law judge correctly decided this issue, however, as the administrative law judge also found assuming, *arguendo*, that the reasonable time limit was extended in this case, that decedent was not injured in the course of an activity whose purpose was related to the employment. *See generally Willis*, 20 BRBS at 13; *Mulvaney v. Bethlehem Steel Corp.*, 14 BRBS 593 (1981). An injury or death is not compensable if it occurs for purely personal reasons or circumstances unrelated to the employment. *See Figuero v. National Steel and Shipbuilding Co.*, 8 BRBS 852 (1978), *aff'd mem.*, No. 78-3345 (9th cir. Nov. 10, 1980). The administrative law judge concluded that there was sufficient evidence in the record to establish that the attack and resultant death did not occur in the course of an activity related to decedent's employment. Decision and Order at 4. The administrative law judge found there was no indication in the record of the exact motive for the assault and murder, but he credited the police report which stated that robbery was the motive.² Cl. Ex. 3. We affirm this determination, as it is rational and supported by substantial evidence in the record. *See Goldsmith v. Director, OWCP*, 838 F.2d 1079, 21 BRBS 27 (CRT) (9th Cir. 1988).

Finally, we reject claimant's contention that decedent was killed in a "zone of special danger." Under this principle, it is not necessary that the employee be engaged at the time of injury

¹ The administrative law judge discussed the conflicting testimony regarding whether claimant left the parking lot between 4:00 and 5:00 p.m. to have his tire fixed, but did not make a finding regarding this issue. Decision and Order at 2, Tr. at 36, 15.

² Three persons were indicted for decedent's murder. At the preliminary hearing, a police officer testified he observed that the flat tire had five puncture marks in the outer wall and none in the tread. Emp. Ex. 3 at 181-182. At this hearing, the judge denied the defendants' motion to dismiss a charge of murder by lying-in-wait. Emp. Ex. 3. Two of the defendants were found not guilty of murder and the third died in custody. Cl. Ex. 9. There is no evidence that any of these men were employees of employer. *See* Emp. Ex. 3; *see generally Williams v. Healy-Ball-Greenfield*, 15 BRBS 489 (1983).

in an activity that benefits employer. All that is required is that the "obligations or conditions" of employment create a "zone of special danger" out of which the injury arose. *See Durrah v. Washington Metropolitan Area Transit Authority*, 760 F.2d 322, 17 BRBS 95 (CRT) (D.C. Cir. 1985). In the instant case, the administrative law judge correctly noted that the record contained no evidence that decedent was exposed to any greater risk of injury in employer's parking lot than he would have been had he parked his van on any of the adjacent streets or lots where other employees parked their vehicles. *See generally Palumbo v. Port Houston Terminal, Inc.*, 18 BRBS 33 (1986); *King v. Unique Temporaries, Inc.*, 15 BRBS 94 (1981), *aff'd mem. sub nom. King v. Director, OWCP*, 684 F.2d 1032 (D.C. Cir. 1982). We therefore affirm the administrative law judge's finding that employer rebutted the Section 20(a) presumption that decedent's death occurred in the course of his employment, and the consequent denial of benefits. *Figuro*, 8 BRBS at 854-855.

Accordingly, the Decision and Order of the administrative law judge is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge